1979-1980

ADMINISTRATIVE REGULATION AND REVIEW COMMITTEE

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Alaska State Legislature

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE
Don Bennett, Chairman
M. "Ed" Dankworth
George Hohman

HOUSE OF REPRESENTATIVES
Oral E. Freeman, Vice-Chairman
M.F. "Mike" Beirne
Charlie Parr

MINUTES OF FEBRUARY 13, 1980

CHAIRMAN - Let the record reflect Representative Freeman, Representative Beirne, Representative Parr and Senator Bennett as present. This meeting I called really not to address down any specific issue other than the total issue of regulations and to apprise the members of really what I have taken the liberty of and done. I met with Joe Gutherie and requested he explore and draft a bill which in fact will put a little bit more teeth in the committee and a little bit more authority in the committee. Some of the problems that we have under the current statutes basically being that we cannot, as you know, suspend any regulations which have been promulgated during the time the Legislature or -- have been in effect during the time the Legislature has been in session. Consequently, it appears to be there's alot of regulations that are promulgated the last thirty or forty days of the session and they're not in effect as far as the actual physical effect on the population. We adjourn and then basically we don't have the authority or ability to suspend any of these. Likewise, there are regulations which are promulgated and on the books that just haven't been enforce or aren't enforced. They take a period of time before the effect of them comes down. And here again, these regulations, as all committee members know, we don't have the authority to do anything with. So hopefully we can come up with a correct piece of legislation that the entire committee can support which would allow us to suspend any regulations for a period of time until the Legislature convenes. This will take care of that, I believe. The second thing that hopefully we can do is to have the resolutions prepared by the committee and brought into either second reading or something to where these resolutions don't necessarily get pocketed by various chairmen or in the committee process. This is being explored. I don't even know if it's totally legal. This is kind of the tack that I have asked Mr. Gutherie to check into. I did want to check with the committee and see if you had any additional things or anything that you feel that we should do in order to put a little authority with the committee. As I see it now, we're kind of in a box. We have a responsibility but we don't have any authority to carry it out.

BEIRNE - Now how does that work now? We're -- if the regulations are passed by the department during the time the Legislature is in session...

CHAIRMAN - Then once we adjourn, we can't do a thing about them.

BEIRNE - Okay, how about...

CHAIRMAN - You can only do things about regulations which are promulgated after adjournment and until such time that you're back in session. So basically, from give or take June through January of each year, those are the only regulations that we have any say so over.

BEIRNE - Okay well supposing regulations are passed in the fall and then when we come back in session, we have review power over those regulations.

CHAIRMAN - Yeah, right. But you cannot suspend them during the interim. They're in effect. The population has to abide by them.

BEIRNE - We can't suspend them between sessions? We can suspend them between sessions.

CHAIRMAN - Only those which have been promulgated between that session.

BEIRNE - Between sessions.

CHAIRMAN - Between that session.

BEIRNE - I see.

CHAIRMAN - In other words, if something was promulgated last year or the year before that, we can't touch them in between sessions.

BEIRNE - Right. Okay so once this session is started then we no longer can suspend them.

CHAIRMAN - That's right. You can only hold them suspended for sixty days after the Legislature convenes. After that they automatically go back into effect, which gives us sixty days to get a resolution through.

BEIRNE - But if we haven't acted prior to the first day of the session then we've lost our authority to act, is that correct?

CHAIRMAN - In suspension, yes. As soon as you're back in, the day. Yes, Charlie.

PARR - Mr. Chairman, you know I've been -- I was on this committee the first time it was appointed back in 76 I think it was, I'm not sure. I wasn't on it between the next Legislature, but on it again this time. The most effective I've seen the committee be was I believe it was in 76 or anyway, we had complaints about regulations and we had committee meetings and we invited the commissioners in and I feel that we more or less said well if you don't want this regulation wiped out, you better revise it. And some of them were cooperative. I remember Tony Motley chairing the Commerce Department come in -- he was heading the Department of Commerce and made some changes to the regulations (indisc.) they'd be wiped out. Now I don't know, of course we do have the problem you mentioned awhile ago. You can put in a resolution to wipe out regulations and it gets buried in the committee and I don't know what to do about that, but that's what is seemingly like a more effective thing then actually wiping out the regulations just to make the commissioner willing to make some adjustments.

CHAIRMAN - You're absolutely correct, Charlie. We've done that on several of them. We've held hearings and really not put in a resolution and the various commissioners or directors have said that they were going to amend or they're going into throws of promulgating new regulations and, you know, it has worked in some cases. But my apprehension is that unless we really got some teeth in this committee, it's only going to be a matter of time and the departments and the commissioners are going to realize, some of them such as Department of Natural Resources, they already realize that if they can work a deal anywhere within the legislative thing, they can stop our resolution. I don't know. They just don't -- DNR does not have any fear of this committee doing anything.

BEIRNE - Oh why don't we amend it then?

FREEMAN - I could sit here and dream up a scenario if they wanted to come up with some on these regulations and start -- if they could judge just about the time we were going to adjourn and they started the process where the regulations were promulgated, you know, and then really came into effect within the last two or three weeks of the session, we go home we can't -- the Regulation Review can't knock them down, we can't do anything until we get back. I've been on this committee from its inception. This is, I think, the third chairman I've served under, Kerttula, Ossi and you. And the one thing that worries me and it always has and I've always taken the position that the last thing on earth we can afford to do is to introduce a resolution that will overturn a regulation and then fail. When we do that we're in trouble and soon or later that's going to happen. And you know, they'll bottle on somewhere, they'll get to some guy.

CHAIRMAN - That one on DNR, it's already bottled.

FREEMAN - And when you do that then they wise up to the fact that there is a way around us. I agree, again I would agree that I think about the most effect that we've ever had simply because on those cases where we have overturned the, but most of the effectiveness has been when we called these guys and kind of threatened them, you know. We have a big problem here and we don't want to go the route of overturning it and you know, shape up, consider revising and so forth. In some instances that has worked pretty well, but as far as I'm concerned, I'm willing to certainly back any approach that would give us a little more muscle. If we lose it, we lose it. We're no worse off than we are now. But I've no hesitancy in supporting a change that would give us a little more power.

CHAIRMAN - And then here again, next January, by the time much of what we get done in that area (indisc.) the chairmanship will be over on the house side and hopefully that this thing can be a tool that not only that you can call commissioners or directors in as you say, show them the ways of wisdom, but then on the other hand, if they fail to see the light, that you in fact can do something. Sue, did you have something you wanted to go over...

LOWELL - In your folders there's some topics for discussion. Senator Bennett has been getting letters and telegrams concerning many of the proposed regulations which the departments will be promulgating and I've listed the main regulations and they're included in the backup in your files, the letters and those regulations which are proposed that were commented about in the letters. Regarding forest practices or the new fire season regulations which the Department of Natural Resources has proposed, there's been quite a bit of anxiety about those. We, Senator Bennett has written Commissioner LeResche a letter about this and that's in your folder. Mining was another issue on the regulations which we received several telegrams and letters about in the Fairbanks area especially. And then there was the handtrolling regulations which a couple of people have inquired about and would like to see hearings held and then of course, the HCR 24 which you were just discussing that died in committee in the first session which would give more power to the regulation and review committee as far as natural resources' regulations are concerned. Now these are just a few topics that we have received so far in correspondence since session started.

CHAIRMAN - Are there any other subjects or any other regulations that members of the committee would like to have hearings on?

FREEMAN - Mr. Chairman.

CHAIRMAN - Yes, sir.

FREEMAN - I've been having, as you may or may not have heard, I've been having considerable problems here lately with the Department of Environmental Conservation over their involvement in land disposal

programs and I don't know what the answer is. I don't know whether new legislation or regulations -- I feel something has to be done to this extent and I haven't really made up my mind what the next move is but I'm close to that point. Last year I introduced a bill that went to Community and Regional Affairs. The bill is resting in House Rules right now that would have stopped DEC's power on subdivisions within the boundaries of a municipality and they're using that, you know, as a real hammer and the quarrel that I have with them right now, they have said that the Division of Lands has a land disposal proposal plan and DEC says that and it was a bill that I wanted to go with on lot sewage disposal and they have said -- they have flatly agreed to -- fail to agree and said they will not under any circumstances approve on lot sewage disposal even if the lots were ten acres in size and what I was trying to do was to have them give that approval on lots at least, you know, five acres size and they said they wouldn't do it even if it was ten acres in size and so this has me in a bind with municipal people and the Division of Lands. In this particular case the Division of Lands is not the villian as far as I'm concerned because they said they'll go ahead with the disposal and they don't care what size, you know. Whatever we want, whatever anybody can agree with, they'll go and so you know I think there is something wrong when these guys, you know, I don't know where the hell they got that power where they can go down in my district, you know. Charlie probably remembers when I had problems with them about water supply. We had to overturn one of the regulations, one of them on minimum lot size. You know, these people are a constant thorn in my side.

CHAIRMAN - Are you going to be available next Tuesday night about 7:00?

FREEMAN - Certainly.

CHAIRMAN - Would you like to have hearings on it? We'll notify them and get them in here.

FREEMAN - Well I think what I would suggest, you know, my suggestion what we'd do would be to have somebody really have a long hard look at the regulations and see if there's something -- you know, they may be doing, for all I know, they may be doing something that the statutes allow them to do. It may be something that we've written in the law that says that's a responsibility so I don't really know. The only time I've ever really tangled with them has always been over regulations. The first time they were adamant. They wouldn't back down and so we got a resolution. They simply overturned the regulation. The next time was when Ossi was chairman and we had a long hard talk with them and you know, it was apparent that something had to be done. If they wouldn't do it, we would have to, and they finally backed out on that. What they were -- in that particular case, they were saying I had one area in a little community where

there was I think, nine families had their own water system and they said this was a public utility site...

CHAIRMAN - Twenty-six people...

FREEMAN - And you know they finally decided that that wasn't necessary after all. After we were worrying about it, but I...

CHAIRMAN - Well, I'd be happy to have Rod Kocsis or Joe Gutherie research it and...

FREEMAN - Well I think that that would be the route that I would like to go. To have somebody actually research it and see if they're abusing regulations somewhere. You know, I might find to my embarrassment that they're actually doing something that the statutes are banded to do that. I don't really know, but I'm kind of suspicious.

CHAIRMAN - Yes sir.

PARR - I've got two things that have come up. One of them, I had a constituent write me and this is a guy who is a teamster and of course you know jobs in Fairbanks right now, he was on the "A" list which he is and has been for years, so he has been selling Amway products, I don't know if you're familiar with those or not. In addition he does a little snow plowing when he gets a chance and he does some other odd jobs. So he went and got himself a business license for this Amway thing and they said well you've got to put down your standard industrial code number and it's a thing that all kinds of businesses have numbers and so he looked through his booklet and he put down three numbers and the gal said you can't do that, you can only have one number per license and so he's supposed to buy three different business licenses at $25.00 a piece to do this, you know. He's just picking up whatever money he can some way or the other, you know. And he wrote me about this and so I -- and he also was wondering why Penny's only had to have one and he had to have three. So I called over to have him talk to people and as a result of the call, I've written the commissioner a letter. I haven't gone any further. I am waiting for the commissioner to reply. I don't really know if this is justified and again, I looked at the statutes myself but I'm not an attorney and maybe the statutes do authorize this determination, but I don't think so, but it would be worthwhile to check out. In fact it did turn out, at least from the information I got, that JC Penny in Fairbanks which is a big retail operation also runs an automobile repair shop on their premise and only had one license. Here is this guy getting stuck with three to do really just pick up things and so maybe the regulation doesn't make any sense on the one SIC number for businesses. The other thing is a personal case and I don't want any preferential treatment, but it sure brought home to me that other people probably have a similar problem. My family and I formed a little partnership and bought a building in Fairbanks, which is under a batement order, we wanted to rebuild it and reconstruct it and lease it out to tourists

(indisc.). It's right in the middle of town. We're trying to build up the center of town. Well we thought we got a tourist loan from the State, but apparently you have to deal with tourists directly yourself, you can't deal through your -- your lessess can't deal with the tourists, right. So we thought well there's a small business loan possibility then we found the regulation is you have to occupy 50 percent of the building. We didn't want to occupy it, we wanted to lease it out. Now I don't want any special treatment from us, but here's a sort of catch 22 situation and these are the Department of Business Loan people, the Department of Commerce. So there's revenue on one hand with their SIC thing with exception to the loans people and I don't know, you know, maybe we should just simply give them the law, it's simply too broad and they have too much authority, I don't know, but they didn't really in either case seem to me to be reasonable -- let's change it back, didn't seem to be necessary regulations.

FREEMAN - Surely you know by no, Mr. Chairman, you know by no stretch of imagination the Legislature ever intended that the guy should have to have three business licenses, no way, right.

PARR - Well, I don't think so. I can see maybe the JC Penny thing where you've actually got two full size businesses and since one's an automobile repair business, you know garage, that's one thing. The other is a retail operation selling shirts. Maybe that's intended, I don't know, but I don't think they intended for a guy who is just picking up a little money doing some, you know, selling Amway products and a little money plowing snow in the middle of the winter, you know to have to go through several different licenses.

CHAIRMAN - Well that's something we should look into. That's not right. There's too many people who are trying to make a living that their endeavors are for more than one straight out venture.

PARR - I have written the commissioner on that one and I can give you the correspondence, Mr. Chairman. You can have it if you'd like and see what kind of answer you can come back with.

CHAIRMAN - Okay these are several -- are most people available in the evening (indisc.) we might have to hold some hearings on several (indisc.) regardless of -- we'll do the research and pull it together.

PARR - Mr. Chairman, Wednesday night the Judiciary Committee meets, every Wednesday night at 7:30 so that night I'm not available, but Tuesday night would be a good night to meet because we have something at 9:00 anyway.

CHAIRMAN - Okay, if it meets with the members' approval and we can get the quorum well then let's set one up for Tuesday night and by that time we'll have the research and the first one shouldn't take very long. Oral, you're from the saltwater

area, what's been your input or what have you in reference to handtrolling? I've had complaints from Senator Ray and all kinds of people.

FREEMAN - I suppose, Mr. Chairman, whatever the outcome, you should have some hearings and it's going to be a doozy when you have it because you've got...

BEIRNE - Is that one you can't handtroll from a sportsboat or something?

FREEMAN - They're going to limit the number of handtrollers and do it by regulation.

CHAIRMAN - But they were stopping people around Juneau, evidently from the complaints I've had that people who had charter services and they were taking parties out to sportfish on a charter, if they had a handtroll license, they couldn't use the same boat to take a charter and you know, whiplashed back and forth. And I've talked to some people (indisc.) and I'm sure Oral knows more about it than I do, but between the purse seiners, the longliners and the gillnetters and the whole bit, that probably the handtrollers are probably the least effective harvest, probably the least of the salmon. On the other hand, I guess they're not that well representive of the fishing industry also.

FREEMAN - I'm a man who has strong feelings about the handtrolling bit on account when I first came to this country, I was a handtroller and I did do some handtrolling and you're right in one respect that they're trying to freeze them out and I've always objected to that because I've always considered the handtrolling to be the poorman's entry into the fisheries. That's a hard way to go but if a guy has got enough guts and ambition to start small and then work his way up, you know, I've always felt that he should be able to do that. Besides that I've (indisc.) feelings when we had limited entry, when we voted on it in the first place. Because of the handtrolling, I have real strong feelings about it and I was assured, I can remember by Mr. Gardiner and Mr. Tillion and numerous others that was pushing real hard for limited entry, that they were not interested in handtrollers. They don't catch enough fish to amount, don't worry about handtrollers, they're no count. But just a few years go by and now we're getting into limited entry for handtrolling and they're going to freeze the rest of them out you see and these guys will be wheelin' and dealin' and selling their -- and when you talk to handtrollers, you can divide it right quick, if a guy has enough time involved that he thinks he is going to get a permit, he wants limited entry and if he's the guy that's just getting started and is afraid he's not going to get one, he don't want limited entry. It's very easy to spot and I've had some real lively discussions with people and I am personally -- I know it, I'm against limited entry for handtrolling.

CHAIRMAN - How about if we schedule and I don't have the date -- how about if we schedule hearings on the first Tuesday in March, about three weeks off, at 7:00 p.m., probably in the Butrovich Room and we'll get out all the necessary notifications and what have you and hold it on handtrolling. We've got a couple letters (indisc.) from people from distant points that want to come and testify so I think it's only appropriate...

FREEMAN - I would make a suggestion, Mr. Chairman, that when you get into this handtrolling bit that if there's anyway that you can, that you get some publicity out to Ketchikan, Petersburg, Wrangell areas so that these guys...

LOWELL - Was there any in the Cordova area?

FREEMAN - I don't really know. There may be, but I suspect that most of your handtrollers are Southeast.

CHAIRMAN - We'll put it out in the newspapers and the whole bit and all the legislative affairs offices. Maybe see if we can't get any public service announcements over any of the local radio stations in Southeastern especially.

PARR - Mr. Chairman, do I understand that you're talking next meeting of the committee is going to be the first Tuesday in March or is that just the handtrolling -- you intend to have one prior to that?

CHAIRMAN - Before that and I want to give lead time. We've got several people who are going to come from distances...

FREEMAN - Live out in the boonies where...

CHAIRMAN - The first Tuesday of March, 7:00 p.m. in the Butrovich Room on handtrolling. Now the -- any of these other regulations, we'll have one of the attorneys do the research on the DEC and we'll come up and then we'll probably schedule hearings sooner than the March hearings on that. Get DEC and then (indisc.) see if in fact they can't cooperate if there's an opening for it. Charlie, do you have information on the business licenses?

PARR - I'll give you the correspondence I have and so forth and statute reference and AAC reference and...

CHAIRMAN - Yeah, if we could get copies on it and then we can set one up maybe in about two weeks on that. See if we can't get them in and talk about it. It appears to be completely...

BEIRNE - What's that?

CHAIRMAN - On business licenses, small business of having two or three different licenses. They may well have to get them in and then go after the loans people and anybody else to see if they're all talking the same game. On the fire regulations, I've written a letter to LeResche as Sue says. We're kind of in a box in that they haven't been promulgated yet, but that's the one that will require that if you've got a cat or piece of equipment working out in the woods and when you shut down, the operator will have to sit there for two hours after the shut down of the machine to insure that some sort of a fire doesn't start. And likewise with anybody with a chainsaw cutting wood and they have to have a Co2 extinguisher with them and they really just have gotten totally overzealous based on the Delta fire.

LOWELL - There is a summary of them.

PARR - It might be one of the things the committee could do to be useful would be to get some of these before they are promulgated and you know, at least maybe they won't have to go into effect and then have to be repealed.

CHAIRMAN - Yeah, well I've sent a letter to LeResche and then Sackett followed up, unsoliticted he followed up with a letter, but basically the thing that they're requiring is you have to have a tank truck out there with a power pump and trailer, just on and on. It just changes the whole lifestyle of anybody that's out in the bush and basically people just can't comply and what happens is that if there is a fire and they're out of compliance with any of these things, then they're held responsible for the fire because of noncompliance. Like I say, I've already sent a letter to LeResche and hopefully these won't be promulgated but we're just going to have to watch, but I had heard that they felt that it would be May before these would be promulgated and that's what furthered my apprehension that we would adjourn out and the committee wouldn't have teeth to do anything about them. I've also had complaining about mining regulations, lack of adequate notice to miners and that alot of the mining items which should be mining regulations that DNR is putting them into other agencies and even over to DEC and they're not being cross-referenced. They try to stay on top of the mining regulations but that doesn't -- even though they comply with those, there are other regulations that they're out of compliance with if they mine and that's one that I'll send a letter over to LeResche on first and we may have to bring up again. Did anyone else have anything they wanted to cover? I don't want to hold you fellows up. Okay, I thank you very much and I have to apologize for my side of the fence not showing up, but we'll try to have them on Tuesday evening.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
27 February 1979 -- 4:00 p.m.

Members Present: Bennett, Hohman, Freeman, Beirne
Members Excused: Dankworth, Parr

General Overview of ARRC

Joe Guthrie, Legislative Affairs Agency, has been the counsel for the committee since its formation several years ago. Mr. Guthrie gave a short overview of the ARRC, the main function of which is to hold hearings and make recommendations regarding the annulment of regulations. He was concerned with the fact that in the past the ARRC has not taken an active role in reviewing regulations. They only reacted when a specific complaint was brought before them either by their own constituents or by the Speaker of the House or President of the Senate. Another problem with the ARRC is that the staff for the committee really doesn't know what the legislators' interests are and, consequently, they tend to do what they want to do.

One of the major problems brought out was that the legislator doesn't have enough time to review regulations along with all his other duties and committee assignments. To review all regulations would be a full time job for an attorney, due to the volume of regulations filed each year.

Another problem is the interpretation of legislative intent. A lawyer can't weigh the regulations on legislative intent; he can only see if they're legally correct. The ideal solution would be to define legislative intent well enough so as to allow a staff person to understand it well enough to pick out regulations to be reviewed by the ARRC.

Committee Assignments

Senator Hohman: Titles 2, 3, 10, 14
Representative Freeman: Titles 13, 17, 19
Senator Dankworth: Titles 9, 12, 15, 20
Representative Beirne: Titles 5, 11
Representative Parr: Titles 4, 6, 7
Senator Bennett: Titles 8, 16, 18

General Comments

Senator Bennett made clear that the ARRC is not to be a punitive committee, but one insuring that government is responsive to the needs of the people. The committee's effectiveness lies in the fact that the ARRC can make recommendations to annul regulations. The suspension power can be used during the interim; however, it should be used only in dire circumstances because you want to be able to kill the regulation and see it die.

Art Peterson, Assistant Attorney General, brought up the Superior Court Ruling of Kelly vs. Hammond, which states that a committee can't exercise the legislative function. He suggested that the ARRC not rely too heavily on the suspension power because of this ruling, for if suspension is viewed as a legislative function, it becomes a question as to whether a committee can execute that power.

Senator Bennett announced that the ARRC would hold a public hearing on land regulations somewhere around March 16, a Saturday.

Lani Martyak, A.A.

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ADMINISTRATIVE REGULATION REVIEW COMMITTEE
TELECONFERENCED PUBLIC HEARING ON 11 AAC 55. LAND PLANNING & CLASSIFICATION
17 March 1979 -- 1:30 p.m.

Members Present: Bennett, Dankworth, Hohman, Freeman, Beirne, Parr

Chairman Bennett called the meeting to order promptly at 1:30 p.m. and laid out the ground rules for the public hearing. The ARRC would proceed alphabetically through the teleconferencing stations, hearing testimony from two people at each station, and each person had approximately five minutes to testify before the committee.

The following is a summarized review of the testimony taken during the teleconferenced hearings in the order in which it was received:

Paul Glavinovich -- Alaska Miners Association -- Anchorage

Mr. Glavinovich testified against the present land planning and classification regulations on behalf of the Alaska Miners Association. The regulations don't reflect procedures for inventory, planning, and classification of state lands as set out in the Alaska Statute,,which passed in June 1978. The current regulations don't reflect the requirements for inventorying state land, nor do they adopt the true levels of land use planning required by the act. Rather than first looking at each of the regions of the state as a whole and delineating the areas of settlement, impact, and areas which should be retained in public ownership, and then using those regional plans as a basis for more detailed planning, the Division's regulations began with detailed planning. There are 19 separate land classifications, all very specific and only six of which are open to locatable minerals.

Mr. Glavinovich told of a meeting with the Division's planning personnel last spring at which the Alaska Miners Association expressed concern that some of the more restrictive classifications could be used to close state lands to mineral entry and they leave out the maximum acreage that should be established for the more restrictive classifications. These suggestions were not heeded and, recently, 380,000 acres in the Tok-Big Delta area were classified public recreation, closed to mineral entry. Another objection that surfaced during this meeting was that the State Division of Mines and Energy Management and the Division of Geological and Geophysical Surveys were not included in the list of state agencies to be consulted in the preparation of a state land use plan. Mr. Glavinovich brought out the fact that the Haines-Skagway land classifications were totally unacceptable to groups of citizens in the Haines-Skagway area, yet the final draft of the classifications is currently being considered and it doesn't incorporate any of the Haines' recommendations.

Mr. Galvinovich also pointed out an article that appeared recently in the Anchorage Times, which showed the new state proposal for classification in the Kenai area--approximately 81,000 acres in fish and game critical habitat areas; 17,000 acres in parks, recreation, and scenic classifications; only 3,000 acres for agricultural use; and 1,300 acres for logging use. In the Statehood Act Alaska was granted a large land base upon which to base its economy. If these lands are not going to be available to economic development, then the intent of that act is being violated. The Alaska Miners Association feels that the approach taken in the regulations is not what was envisioned by the Legislature when they adopted HB 720 last year.

Jon Maloney -- New Homesteaders -- Anchorage

Mr. Maloney pointed out the dangers of two of these classifications--greenbelt and

forest land. The greenbelt classification definition opens up the whole state. It not only covers the transportation routes, as intended, but it also covers the prominent physical features of the land, which includes the mountains and the open spaces between. He compared the Division's use of classifications to the restrictions imposed by President Carter under the Antiquities Act.

Regarding forest land classifications, Mr. Maloney recommended that a minimum requirement of 15,000 board feet per acre be put on it to prevent the Division from classifying stick land just to get it away from the public.

Mr. Maloney also stated that he had attended a land disposal meeting in Wasilla, and the people there were upset because they have to purchase 40, 50, or 60 acre lots, most of which is underwater and unuseable.

William Wood -- Fairbanks Industrial Development Corporation -- Fairbanks

Dr. Wood stated that it seemed to him that the concern of the regulations' proposers was a totally restrictive one. There are no provisions for assimilating the wide use of land for human persons. There is no consideration of the social and enonomic costs to all people for idle land.

Dr. Wood suggested that in Section 11 AAC 55.030 a period be placed after the words "general public." The drafters of this proposal seem to give preference to certain groups that are named, and since you can't name them all, why name any?

He also suggested that the last phrase in 11 AAC 55.040, which reads, "the provisions of the more restrictive will govern," should be changed to "the wisest and best use should govern."

In closing, Dr. Wood stated that the management goals of the lands of Alaska should be people goals--to provide food, fuel, fiber, tools, recreation, and spiritual fulfillment.

Helen Warner -- Circle Mining and Recording District -- Fairbanks

Most of Ms. Warner's testimony is not decipherable on the tape; however, she did express her concerns about the regulations. She stated that the majority of the Circle Mining District which was not included in the Yukon Flats Monument has been selected by the state. Since the area is industrial, residential, and recreational, water users will be required to meet existing water standards throughout the area and this is not a realistic attainment goal to the very well established and traditional placer mining industry in that area.

Stephen Reeve -- Department of Natural Resources -- Juneau

Mr. Reeve, the Chief of Planning and Classification for DNR, was concerned about the misconception that the Department is not getting a good land disposal program going. The present state land classification program, as revised recently, is a reasonable tool being administered by reasonable people and the goal is to assist in the reasonable use of state lands. All state land classifications provide for multiple use of state lands--there is no land that is withdrawn. Only the Legislature itself can withdraw land, and they have set aside some four million acres for the various parks and wildlife refuges that are located throughout the state on state land.

The classification system was first adopted in 1959; however, last year the department was mandated by the Legislature to adopt new regulations for land classification. The major change in the classification system from the previous one is that classification now has to be based on land use plans, which consider all the things, like resources, topography, water availability, etc. The second major change is that now there's more opportunity for public review of state land classifications. There are 19 categories, eight of which are in a disposal category. He mentioned that, at the present time, they're classifying some 120,000 acres of land in the open-to-entry and homesite categories in order to accommodate the land disposal program for this year.

The DNR has been classifying land for about 20 years; however, very little land, not over several thousand acres, has been classified in any category since the last election. The classifications closest to having been through the mill at this point are: approximately 400,000 acres classified for the gas pipeline corridor, around 600,000 acres for various municipalities in the implementation of the Land Entitlement Act, and roughly 200,000 acres in the Fairbanks area.

Mr. Reeve was asked what would happen if the Division's power to classify land was just taken away. He felt that there would be no structure or framework for deciding how to best use state land. It was also brought out by a committee member that land classified homesite and open-to-entry always seemed to be at the bottom of the list. Mr. Reeve replied that he was talking about the land disposal program, not the classification program, and explained that, when it comes to land disposal, classification is merely a rubber stamp for land.

The Department doesn't have a 640 acre statutory limitation for classification of land; therefore, classifications over the years have exceeded 640 acres. The only limitation they do have forbids them from classifying over 3,200 acres in any municipality without their approval. The municipalities can and have dropped classifications of land in organized boroughs.

It was brought out during the testimony that the main obstacle seemed to be a difference in philosophy in regard to the best use of state land.

Douglas Terhune -- Self -- Anchorage

Mr. Terhune's concern was that, no matter what kind of regulations are finally approved, the kind of land disposal program we get is determined by those administering the program. He felt that the Division of Land has an extremely poor track record in this regard and that these regulations would continue to be abused by the Department. He suggested that a major turnover of the personnel in the DNR be undertaken because of the major difference in their philosophy and that of the majority of Alaskan citizens. Another suggestion made was that key officials who administer state land programs be elected, not appointed.

Chuck Hawley -- Alaska Miners Association -- Anchorage

Mr. Hawley commented on the 640 acre limitation that has been the subject of controversy throughout the hearing. Mr. Hawley seemed to feel that this law was not repealed last year and that the DNR, in their classifying position, is removing land from multiple use in excess of 640 acres.

Mr. Hawley made clear that members of his organization believe strongly in private ownership; however, land for mineral use should remain in state ownership so that it's available under the mineral disposal system. There are currently two mineral disposal systems: locatable and leasehold. The main problem with the current regulations is that leasehold mineral disposal requires more knowledge of the mineral base then the Division possesses to decide whether it's appropriate to remove other leasehold systems.

It was pointed out that the DNR had drafted these regulations before the legislative mandate was passed out of the Legislature and they didn't really look at the legislation before they adopted the regulations.

There has been some positive working relationship with the Planning and Classification Section in the Haines area; however, the fundamental disagreement is whether the bulk of those lands should be classified as resource management or resource assessment. Resource management classification requires leasehold system for mineral development and resource assessment doesn't. There is no current state leasehold system in place for hard mineral development; therefore, they can't endorse a mineral leasehold system.

Merrill Palmer -- Haines Coalition -- Juneau

Mr. Palmer spoke on the problems that the city of Haines is having with the DNR. Haines wants to have a timber sale, but they can't do so until after the land is classified. Classification has been going on in that area since 1972 with no conclusive results. The Haines Coalition was formed and devised their own plan and gave it to the state for incorporation into their plan. The plan that was drafted by the Division of Lands was totally unacceptable to the majority of the people in Haines--they felt the plan did not fit into the philosophy of multiple use concepts.

Mr. Palmer feels that Haines is being put into a blackmail situation, where if they don't agree to the classifications set by the DNR, they won't have their much needed timber sale. The Haines plan represents the philosophy of the majority of the people from Haines and DNR isn't using it. It seems that DNR is more concerned about the scenic value of the land rather than people's livlihoods.

The only group in Haines that supported DNR's proposed classifications was the local conservation group, composed of about 15 members. Mr. Palmer brought out the fact that the Haines Coalition is now working with the conservation group and working with them better than with the state.

Allen Cronk -- Fairbanks North Star Borough -- Fairbanks

Mr. Cronk, the Land Management Officer for the FNSB, testified in favor of the classifications. The classifications do meet the needs of the Borough in the selection of municipal lands. Mr. Cronk stated that classifications are needed in the Fairbanks area for municipal land selection and said that the current classifications have been well thought out and well coordinated with local input. They tend to protect needed or desired values, only in our best interests. The FNSB will support the current classifications as long as local input is sought and given due consideration.

Ernest Wolff -- Self -- Fairbanks

Dr. Wolff feels that undue restriction is being put on the use of land. You don't plan for anything except the p[illegible]le and you don't need to accept this plan. State land is supposed to be for the people; however, it's getting to the point that we'll only have .3% of private land that we'll be restricted to. The land should be gotten out to the people in private ownership. Dr. Wolff feels that people can do their own classification.

Dr. John Morris -- Self -- Juneau

Dr. Morris brought out the fact that in Section 11 AAC 55.020(b) the key words are, "No disposal...until...classified..." The question is who will do the classifying. The people who own land will classify it. An inventory should be known before any classifications are made, and individuals should make it. The multiple use concept is essential for research, but before you dispose of land, you should still know what's there. Private ownership of land and resources is essential to human life and growth. Priorities of land use values are, from greatest to least, habitation, land, food production land, renewable resource land, transportation system land, energy resource land, mineral resource land, wildlife and fisheries resource land, then recreational land and wilderness land.

The people who inhabit the land should decide, not the people who visit the land. He suggested leaving out all classifications except ones having to do with habitation, agriculture, renewable resource, transportation systems, energy, and minerals. We're already surrounded by state parks and wildlife refuges.

Private ownership is more important than how that land is used. The way the DNR is treating the people of Haines is identical to the way the federal government is currently treating Alaska as a state.

Phil Holdsworth -- Self -- Juneau

Mr. Holdsworth, who was the Commissioner of Natural Resources during the first nine years of statehood, testified that he felt that DNR didn't really realize what the impact would be when they adopted these regulations. The problem is the organization itself--the Division of Lands should be directly responsible through the people who manage this land and dispose of it. The planners don't seem to be using any input from other agencies or the public.

Mr. Holdsworth also brought up the Haines classifications and mentioned that he had attended a meeting of the Haines Coalition and the Division of Lands. It seemed that the Division was acting on behalf of the conservation society, about 17 people, rather than the 510 people who signed the Haines Plan. This is a difference in philosophy.

Mr. Holdsworth also spoke of the mineral closing order in the Fairbanks area. He had gone to the Deputy Commissioner of Natural Resources and asked why this withdrawal was being made and wasn't it in violation of the statute saying that no area more than 640 acres could be closed to multiple use. The DNR stated that closing land to mineral entry did not violate multiple use, because the land could be used for two or three other uses other than mineral use. The law originally stated that land could not be closed to three specific things, and one of them was mineral entry, if it exceeded so many acres in size.

Resource management cuts off land to location of minerals. The Division of Lands wants to classify most of the land in the Haines area under this resource management classification. You must have a good data base before closing land to mineral entry. Mr. Holdsworth feels that the Haines Plan is a very sound plan.

Kirk McGee -- Cook Inlet Region, Inc. -- Anchorage

Mr. McGee, who is a land planner for Cook Inlet Region, Inc., testified that he has found the present land classification system very well adapted. They allow for the state's interest to be addressed, as well as public review and involvement.

Harold Galliett -- Self -- Anchorage

Mr. Galliett asked that the ARRC set aside these regulations indefinitely. He stated that they were arbitrary, autocratic, and undemocratic. In the past 25 years, he has observed an increasing lockup of our futures, prospects, lands, and rights.

Resource assessment classification seems to be just another lockup. Others seem to have been designed to frustrate the will of the people which has been expressed. We do need some action, but these regulations are not the answer. We need to give more protection to the individual.

Roudolph Vetter -- Self -- Fairbanks

Mr. Vetter first read testimony for Mark Ringstad, in which Mr. Ringstad stated that he wanted no more regulations, that they're not necessary. Environmentalists are advocating a leasing system for mining and trying to kill the mining industry. Mr. Ringstad supports the 1872 Mining Law and opposes the leasing system.

Mr. Vetter then expressed his own concerns about the regulations. He felt that all of the regulations should be removed at this time. Economics will prevail. Part of the unemployment problem in the state is due to the regulations against development. We don't need classification--we do need title, fee simple development of lands without restrictive legislation. How can mineral lands be determined if classified? What will the criteria be? The removal of classification would result in natural economic selection and this will be the end result, regardless of any regulations. We need private ownership of land, not leasing.

Mr. Vetter suggested that we remove classification entirely, or at least in regard to mineral and petroleum development.

Charles Parr -- Self -- Fairbanks

Mr. Parr stated that he made a chart enumerating the disposals which are authorized under these regulations and he will send that chart to the Committee. DNR originally said that there were 8 disposal classifications, but Mr. Parr was only able to count six. Mr. Parr stated that he didn't really know if legislative intent had been met by the promulgation of these regulations and he questioned 11 AAC 55.020(b)(3), stating that this regulation didn't state when land had to be appraised. In 11 AAC 55.030(a), it states that, "The regional or area land use plan will determine... the location, size, and timing of disposals to private ownership..." Isn't this a legislative prerogative, not an administrative one? In 11 AAC 55.030(c) it states

that, "Management guidelines are part of the classification order, and all uses or disposals to private ownership must be consistent with them." Mr. Parr questioned whether, once land transfers into private ownership, it's subject to the zoning or planning functions of that municipality or perhaps the individual. With these regulations, the only mineral lands available for disposal are those acquired by escheat or foreclosure.

Richard Spitler -- Self -- Juneau

Mr. Spitler testified as a private citizen; however, he does work for DNR as a land management officer for the Southeastern District. His job deals with land disposal and he feels that classification is helpful to him as a guideline in making his decisions as to what is the best use of the land. He agreed with previous testimony that the problem was a question of philosophy.

Leo Mark Anthony -- Self -- Anchorage

Mr. Anthony stated that state lands should be multiple use lands and these regulations are not providing for that concept. 11 AAC 55.020(b)(1) should read "mineral location and leasing are permitted on all unoccupied land" rather than the way it reads now. Classification is being used as a sort of a mini-Antiquities Act by the DNR. The present mining laws are good and shouldn't be changed by regulations promulgated by the DNR. Only 17% of all Alaskan land, both state and federal, is now open to mineral location. Under 11 AAC 55.040(c), the word "leasing" should be changed to "location." Under 11 AAC 55.040(e), you should strike out "...subject to any restrictions in each specific classification: resource management and wildlife habitat." Under 11 AAC 55.040(f), you should strike out "greenbelt."

Mr. Anthony opposed land being put in the resource assessment category because the DNR lacks the capability for proper mineral resource assessment. Land should not be retained in an assessment category pending the education of the DNR. Land should be open to multiple use, which would then provide knowledge about the land.

Lands subject to mineral leases should have a 20 year lease period, not the 5 or 10 years mentioned under the resource management classification.

Mr. Anthony is opposed to the wildlife habitat land classification becuase the Department of Fish & Game can use other laws to protect habitat. The commissioner's power to withdraw, withhold, and classify lands should be limited to a maximum limit per year which is set by the Legislature.

Gary Thurlow -- Self -- Anchorage

Mr. Thurlow pointed out the fact that you can have good regulations and poor regulations. Poor regulations can be implemented in a very good manner and good regulations could be implemented in a very poor manner. Classification regulations can serve a very useful purpose for Alaskan land. We need to pay close attention to how the regulations are used. Although residential and homesite use for lands is a very high priority, it is not always the best use for all the land in Alaska. It is necessary for the mining industry that prospectors be allowed to move around freely over the land. Another area of importance is the need for corridors so people can move around the state. Agricultural land must be made available to the people in order to have

agriculture as a part of our economy. A good use for greenbelt land would be to give protection to the banks of rivers.

Jim Johnson -- Self -- Fairbanks

Mr. Johnson made extensive comments back in July, when these regulations were still just in the proposed stage. At that time, Mr. Johnson urged DNR to scrap the entire project and proceed with the business of producing a land use plan for Alaska. If the plan that DNR draws up is rational, it should have no problem getting the support of the people. Classification itself is really an issue of control of individuals and such control has no place in a bureaucracy. The Legislature should regain this control before implementing any new actions under these classifications.

Helen Nienhueser -- Division of Lands -- Nome

Ms. Nienhueser believes that Merrill Palmer had overstated the differences between the recommendations made by the DNR and the Haines Plan. The Haines Coalition does represent the view of the majority of the citizens of the Haines area and, therefore, most of the suggestions of the Haines Coalition have been incorporated into the draft plan. Ms. Nienhueser stated that the state has heard from many citizens who do not believe in the Haines Plan and they're trying to compromise between the two groups. The state plans to wait until they receive the draft from the efforts of the Haines Coalition and the conservation group before going any further.

Most of the land in the Haines area will be classified as forest land to provide a base for the timber industry. The area classified as scenic areas will amount to not cutting 5% of the trees in the Haines area.

As far as the classification regulations are concerned, the Division, when drafting the regulations, did work closely with the Mining Division of the state. A lot of the language in the regulations only repeats the language in the statutes, in order to make the legislative intent clear.

It was brought out in the questioning that the DNR was the one who proposed that the Legislature adopt the original statute which allowed for the land planning and classification.

Bertha Midyett -- Self -- Anchorage

Ms. Midyett was upset that the people from the Division of Lands were testifying in their own defense and taking the time away from the public. She was also upset about the fact that many of the people in state government are appointed and don't really have the proper background and qualifications for the particular jobs. A committee should be set up to investigate the quality of our land, instead of the quantity. The classifications should just be thrown out and we should start all over again.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
29 March 1979 -- 4:30 p.m.

Members Present: Bennett, Dankworth, Parr, Beirne

11 AAC 55. Land Planning & Classification

Billy Berrier, Legislative Affairs Agency, was asked what effect the annulment of these regulations would have on the municipal land grant program. Mr. Berrier pointed out that AS 29.18.201 states that land doesn't have to be classified and, therefore, annulment of these regulations would not have any effect on the municipal land selections; however, he wanted to check into it further to find the basis for this feeling. Mr. Berrier also pointed out that AS 38.04, the basis for these regulations, has a very strange definition of multiple use; but in no place does it set up the consequences of what would happen if you didn't go through with the classification.

Phil Holdsworth, a consulting engineer, testified that it is necessary and proper to classify land with public participation before the land can be properly managed in the public interest. As brought out in the hearings on 17 March, the problem seems to be with the philosophy of their use. The removal of these regulations would be a real delaying action in the land disposal program.

As a solution to the problem, Mr. Holdsworth suggested that we go back to the original language in the Alaska Land Act of 1959, Section 38.05.300 (the classification of land), which stated:

> "No state land, water, or land and water areas shall, except by act of the state legislature, be: (1) withdrawn from settlement, location, sale or entry; (2) reserved for special use; or (3) restricted from operation of the mining and mineral leasing provisions of this chapter, if the area involved in withdrawal, reservation, or restriction exceeds in the aggregate 640 acres."

This spells out multiple purpose use and would be more of a safeguard in classifying large areas of land and closing the land to some particular use. The way it is now DNR can classify over 640 acres without legislative approval because the definition of multiple use states that multiple use is land open to two or more uses.

Pat Conheady and Steve Reeve testified on behalf of DNR that the classifications are not withdrawals and are subject to change. They are just used to decide what uses should be where and they are the only way to determine, with public input, how state land should be managed. They explained how classifications can be changed; however, there is no time frame and the suggestion was made to incorporate a maximum time frame, probably about 60 days, into the regulations. It was also suggested that temporary permits be given to individuals rather than make them wait for years for DNR to make a firm mandate. Right now people are just held in abeyance.

Steve Reeve proposed the following three improvements to the classification program and asked that the Committee consider them instead of voiding the regulations:

1. A public information program is needed to get out the information that this classification program isn't like the federal government system--the classifications are temporary and can be changed.

2. Anytime there is a classification, DNR would get together with the legisla-

tors from the district in which the land was being classified and review the classifications with them prior to any set classification.

3. Allow DNR to come back before the Committee next January with a list of improvements or changed in the regulations or statutes after having had a year and a half of experience in land planning and classification.

Mr. Reeve stated that he could not go along with Mr. Holdsworth's suggestion of changing the language in the statutes because limiting classification to 640 acres without legislative approval would not allow DNR to cover the protection of renewable and non-renewable resources, since they usually occur in larger than 640 acre plots.

During the questioning it was brought out that right now the people who do the classifying don't answer to any elected officials. It seems that there needs to be some sort of mechanism of elected officials and of public hearing, so why not set up a Classification Review Board made up of legislators who would meet once a year or so to review classifications and provide an opportunity for the public to change classifications.

No action was taken on these regulations pending a legal opinion from Billy Berrier, Legislative Affairs Agency.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
29 March 1979 -- 4:30 p.m.

Members Present: Bennett, Dankworth, Parr, Beirne

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Mr. Reeve stated that he could not go along with Mr. Holdsworth's suggestion of changing the language in the statutes because limiting classification to 640 acres without legislative approval would not allow DNR to cover the protection of renewable and non-renewable resources, since they usually occur in larger than 640 acre plots.

During the questioning it was brought out that right now the people who do the classifying don't answer to any elected officials. It seems that there needs to be some sort of mechanism of elected officials and of public hearing, so why not set up a Classification Review Board made up of legislators who would meet once a year or so to review classifications and provide an opportunity for the public to change classifications.

No action was taken on these regulations pending a legal opinion from Billy Berrier, Legislative Affairs Agency.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
10 April 1979 -- 5:00 p.m.

Members Present: Bennett, Hohman, Dankworth, Beirne, Parr

11 AAC 55. Land Planning and Classification

Chairman Bennett called the meeting to order and asked the question: "Should the Administrative Regulation Review Committee recommend annulment of 11 AAC 55. Land Planning and Classification?"

The vote was taken by a show of hands with the following result:

Yeas:	5	Bennett, Hohman, Dankworth Beirne, Parr
Nays:	0	
Absent:	1	Freeman

A resolution recommending annulment of 11 AAC 55 will be drafted tomorrow.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
26 April 1979 -- 4:15 p.m.

Members Present: Bennett, Freeman, Beirne, Parr

18 AAC 72.060 -- Plan Review
18 AAC 72.065 -- Subdivision Plan Review

Jon Scribner and Deming Cowles testified on behalf of the Department of Environmental Conservation that these regulations were not holding up the land disposal program, as stated by Commissioner LeResche in his letter to Senator Sumner dated 9 April 1979. In dealing with potential wastewater problems it's not the size of the parcel that matters so much as the land itself; however, the smaller the parcel, the more serious the potential problem (i.e., less than one acre).

A review is required whenever a parcel of land is broken up into more than five parcels, for then it is defined as a subdivision. It normally takes about three days to have the review completed by DEC.

Senator Bennett stated that some assurance is needed that these regulations will not hold up land disposal and asked the representatives from DEC to get with DNR to discuss the matter and get back to the committee with their findings.

Lani Martyak, A.A.

ADMINISTRATIVE REGULATION REVIEW COMMITTEE
8 August 1979 -- 8:15 a.m.

Members Present: Bennett, Dankworth, Hohman

21 AAC 05.010(b) -- Complaints

Dale Cheek, Director of the Wage and Hour Division of the Department of Labor, testified that he didn't feel that this regulation should be used against an individual. In his estimation, anonymous complaints carried no value and only left the door open for harrassment type complaints. He also felt that the ombudsman should only pass along those anonymous complaints that he had investigated to the affected agency or individual--the ombudsman shouldn't pass along all anonymous complaints that he had not personally looked into and found some merit to the complaint. Mr. Cheek felt that it would be okay for the ombudsman to bring to the attention of the department, not any one individual, a function they are failing to perform brought out by an anonymous complaint. The ombudsman should not zero in on any one individual.

Ed Sharp of the Alaska Public Employees Association testified that APEA didn't have any intention to thwart the efforts of the ombudsman or his staff, but they felt that this regulation was not in the best interests of their employees because it does allow anonymous complaints against individuals, only because the statutes allow the ombudsman to construe an individual as an agency. This regulation refers to agencies only, but because the ombudsman can refer to individuals as agencies, he is allowed to take anonymous complaints against them. The real source of the problem is the definition of "affected agency." APEA feels that it's okay for the ombudsman to notify the affected individual of an anonymous complaint against him. if, and only if, the complaint doesn't go anywhere else, i.e., his supervisor or a commissioner, as that would create an atmosphere of distrust and animosity between an employee and supervisor.

Paddy Moriarty of the Ombudsman's Office testified that she felt this regulation limited the ombudsman's jurisdiction, rather than extended it. They only investigate anonymous complaints on the ombudsman's motion, whereas other states investigate all anonymous complaints. All they are doing is passing along this information to the agency involved and leave any investigating up to the agency involved. It was brought out that oftentimes the ombudsman's office will get an anonymous complaint from a person who has to deal with a particular agency and is dependent on that agency and is having real problems with it, so the ombudsman is acting as a pass through. Ms. Moriarty mentioned that anonymous complaints were being passed on as unsubstantiated allegations and they were being passed along not only to the affected agency, but also to the individual involved.

During the testimony, it was brought out that a certain amount of authenticity is passed along when the complaint comes from the ombudsman office or any state agency. Once a rumor comes from an official agency, it is perceived differently and given more credence than if an anonymous caller called the supervisor directly.

Joe Guthrie, Legislative Affairs Agency, testified that this regulation was inconsistent with the statutes. The statutes indicate that a preliminary evaluation must be made when complaints come in, that complaints that have merit must be investigated. Therefore, the ombudsman is passing along information that he has already decided isn't worth his time investigating.

Lani Martyak, A.A.

TIMBER MATERIAL SALES

11AAC

February 26, 1980

Mr. James H. Johnson
P. O. Box 81634
College, Alaska 99708

Dear Mr. Johnson:

Thank you for your recent letter and enclosed testimony regarding the proposed regulation changes by the State Division of Forest, Land and Water Management.

I am in agreement with you that the regulations are extremely overbearing and should definitely be carefully reviewed. As Chairman of the Administrative Regulation Review Committee and also as an individual who has been previously involved in mining, I am committed to hold public hearings some time within the near future. The Department of Natural Resources' Commissioner and other representatives will be requested to attend the hearings so that other members of the committee, as well as individual citizens, can directly address their concerns and recommendations relating to the proposed regulations. I will notify you on the schedule as soon as it is arranged.

In closing, Mr. Johnson, I appreciate your input and concerns, and I will provide each member of the Regulation Review Committee with a copy of your testimony for their study.

If I can be of further assistance on this or other matters, please do not hesitate to write or call collect to 465-2714 or 465-3871.

Sincerely,

Don Bennett

James H. Johnson
P.O. Box 81634
College, Alaska 99708

February 7, 1980

Don Bennett
U. S. Senate
Pouch V
Juneau, Alaska 99811

Dear Sir:

Enclosed please find a copy of my testimony regarding regulation changes proposed by the State Division of Forest, Land and Water Management. These proposed regulations are extremely onerous, and deserve the scrutiny of anyone concerned with utilizing Alaska's resources.

Sincerely,

James H. Johnson

JHJ:bg

Enclosure

James H. Johnson
P.O. Box 81634
College, Alaska 99708

January 23, 1980

Theodore G. Smith
Director, Department of Natural Resources
Division of Forest, Land and Water Management
323 E. 4th Avenue
Anchorage, Alaska 99501

Dear Mr. Smith:

The proposed new chapter of the Alaska Administrative code entitled 11AAC 65, Land Use Permits, is the most nefarious set of draft regulations I have read since 11AAC 55. These draft regulations use the pretext of simplifying and consolidating already existing regulations as the foundation for an executive edifice capable of usurping and abusing individual, legislative, judicial and inter-departmental rights. They are too general, too discretionary. In effect, these regulations would give the Division of Forest Land and Water Management unlimited authority to control the activities of anyone who happened to light upon a piece of ground anywhere in the state in anything more than his bare feet.

I am somewhat reluctant to comment on this draft in a specific manner, as many of my objections to these proposals are of a general and ideological nature. For example, I object to the concept of a general purpose land use permit. Why must all activity on state land be "permitted"? What about land use rights? The nature of the general permits proposed in 11AAC 65 are such that no guidelines are given as to what might be required of a permittee, how long a permit will last, what it will cost, whether an activity is indeed even "permittable", or whether an activity that is permittable today will be tomorrow. In short, there is no means by which a man may determine his rights. And indeterminate rights are no rights at all.

It seems clear that proposed 11AAC 65 has been penned from the black ink of that sophistical well which has bubbled up the notion that the state is a landowner in the same sense as an individual, and that it is a proper function of a government to be a landowner. I do not subscribe to this idea and I believe that it is abhorent to the basic ideals of American liberty, and of the separation and reservation of rights between individuals and governments. Yet, even from the philosophistic view of the state as a landowner, the proposed concentration of so much discretionary power in the hands of one man can not be justified.

While I decry the proposed regulations of 11AAC 65 on basic terms, I suspect that such input will be considered impractical and of no consequence by your department. Therefore specific objections may seem more useful to you.

Throughout proposed 11AAC 65 there is a conspicuous lack of any mention of mining claims and the rights which are attendent thereto. In fact, I submit that the various sections of proposed 11AAC 65 have been devised to circumvent mining law and to force a general leasing system for mineral development on any state land. For example, 11AAC65.030 states that "unless" (my emphasis) authorized by a lease....." almost any activity on state land is prohibited without a valid land use permit. And 11AAC 65.070 provides that "the director may refuse to issue a permit and require the applicant to apply for a sale, lease, or other disposal of an interest in state land instead", if "in the director's judgement" the "activity for which the applicant seeks a permit is of such character, duration, or magnitude, or when any other circumstances indicate" (my emphasis), that it should not be permittable. It is only a matter of time before, as 11AAC 65.010 (b) puts it, "a person in authority" will decide that no mining activity of any manner is permittable. There has already been an attempt in the state legislature to introduce a leasing bill for uranium. With the controversy and fervor surrounding the uranium and nuclear industry, I predict that, if left unchecked, these and other provisions of 11AAC 65 will be used immediately to force a defacto leasing system for uranium.

Another proposed provision aimed specifically at hampering the mining industry is 11AAC 65.220. Part (a) restricts the use of a permit to the permittee only, unless a bond is furnished. Since the mining industry uses contractors and consultants extensively, this provision will essentially force a mining claimant to post a bond. Yet 11AAC 65.270 dealing with bonds is nebulous and discretionary. The terms of a potential bond are not defined, and typical language from this section is "at the director's option"; "the director may, in his discretion"; "impose special terms and conditions"; etc. Nor does 11AAC 65.220 (b) offer relief. It is untenable to have a contractor or employee of a permittee as a joint permittee. Presumably, a joint permittee will have the same authority to act or not act under the permit and to represent such actions to the state. If a contractor or employee is at odds with a claim owner, the claim owner will be at risk for actions he may have no control over and which he does not condone.

Section 11AAC 65.130 dealing with public notice will be used to selectively haze the mining industry. Again, at the sole discretion of the director, he may decide that public comment must be sought before a permit is issued, and at the permittee's expense! It is interesting to note to what great lengths and with what imagination bureaucracies will go in their attempts to exempt themselves from statutory public notice and comment requirements. Yet when it serves their purpose, when it is a convenient tool at their disposal, "public notice" is front and center.

The list of objections to these proposed "regs" continues. For instance, 11AAC 65.010 mentions "other disposal document" (s). A mining claim is a disposal document and should not be ignored. 11AAC 65.030 (5)(A) mentions "operations limited to existing roads". What is an "existing road"? The mining industry's history with that question would make anyone shudder. 11AAC 65.040 (a) states that "by order, the director may impose a land use permit requirement" even if "the same activities do not require a permit elsewhere on state land". This is an attempt to circumvent statutory limitations, legislative authority, and the statutory land planning responsibilities of other units of the state government. Section 11AAC 65.650 is irrelevant and dangerous. While it does nothing to confirm a disputant's rights, it is an attempt to place the burden of proof on the disputant. It is an attempt to abrogate the judicial process. 11AAC 65.100 and several other sections mention a "use fee", yet its amount and application are uncertain and subject to change. Section 11AAC 65.150 may conflict with other provisions in state law regarding water rights. 11AAC 65.245, 11AAC 65.255 and the combined effects of other sections of these proposed regulations are incongruous. No one is going to commit hundreds of thousands of dollars to a very risky endeavor such as drilling for minerals or oil and gas, if a permit to do so can be revoked by a "management decision", or, worse yet, merely "upon 30 days notice". The twisted, catch-22 nature of 11AAC 65.245 alone leaves me with a wonderland incredulity. Many of the provisions of 11AAC 65.260 and 11AAC 65.265 dealing with General and Additional Stipulations are oppressive and unreasonable. For instance, it is common practice to fly supplies into remote areas in the winter by utilizing frozen lakes and rivers to land on. Yet 11AAC 65.265 (12) specifically forbids this practice. Other parts are arbitrary, and the list goes on.

The regulations as proposed in draft 11AAC65 are in total so ill-conceived, and they will have such a deliterious effect on every individual and business in Alaska, that they should not be adopted at this time. I urge you to reconsider them in whole, and if there truly is a need to revise the current permit regulations, then much more time and thought should be devoted to this issue than has apparently been applied to date.

Sincerely,

James H. Johnson

JHJ:bg

EARTH-MOVERS OF FAIRBANKS, INC.

GENERAL CONTRACTOR
925 Aurora Drive
Fairbanks, Alaska 99701

Phone (907) 456-5087
(907) 452-5634

January 18, 1980

Representative M. F. Beirne
Assembly Building, Room 209
Pouch Y, State Capitol
Juneua, AK 99811

RE: Proposed Regulations Timber & Material Sales

Dear Representative M. F. Beirne:

It seems 11AAC 71.420 of the Forest, Land & Water Managements proposed regulations arbitrarily lengthens the amount of time necessary to obtain state material sale plus adds adimension of cost and cannot be accurately predicted for bidding purposes. As the regulations are currently written, it takes a minimum of six months for a material sale and up to 1½ years.

A good example of this is the Peede Road Project now under contract to Earth Movers of Fairbanks. This project was awarded in November and we initially applied for a state material sale adjacent to the project.

If we are lucky our permit may go through prior to the 1980 construction season. If the project would have been let in the spring of 1980, it would have been impossible to obtain a state material sale with the time constraints of the project.

As you can see the State sets a time limit on the project and also controls the time necessary for a material sale. The proposed regulation does absolutely nothing to speed up this convoluted process.

Our recommendations are as follows:

1. Delete all reference to apprasials. The current method of establishing values are quite sufficient.

2. Currently there are statutory minimum limits on time required for permit issuance. These should be ten week maximum limits after which the permit is considered valid. If the State insists on regulating our lands in this fashion, it must take the responsibility to see that these things are done in a timely manner. For example, at this time the Fairbanks A.D.L. Office has one man in charge of all

material sales north of the alaska range, He currently has 49 material sales applications on his desk, none of which can be processed in a timely manner.

3. All State Agencies review . should be conducted simulatenously using the same legal advertisements and public comment period.

4. Establish better coordinations with the Crops of Engineers, if a corp permit is necessary .

Sincerely,

EARTH MOVERS OF FAIRBANKS, INC.

Sam Helms

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Sincerely,

EARTH MOVERS OF FAIRBANKS, INC.

Sam Helms

March 17, 1980

Mr. Sam Helms
Earth Movers of Fairbanks, Inc.
925 Aurora Drive
Fairbanks, Alaska 99701

Dear Mr. Helms:

I have been provided a copy of your letter to Sally Smith, in which you expressed concern over the proposed regulations relating to timber and material sales. Please know that I share your concerns.

After reviewing your letter, I find your recommendations to have much merit, and I will certainly take them under serious consideration when the Regulation Review Committee takes up 11AAC 71.420; and I will also provide each member with a copy of your letter. Mr. Helms, I can understand the problems which would be forced upon you with the adoption of this regulation, and I am in agreement that it would not expedite the process of a material sale.

In closing, I appreciate your input and recommendations and will make sure that the committee is advised of them. If I can be of future assistance , please feel free to contact me.

Sincerely,

Don Bennett

cc: Administrative Regulation Review
Committee Members

ALASKA STATE LEGISLATURE HOUSE OF REPRESENTATIVES

REPRESENTATIVE SALLY SMITH • 321 CHURCH STREET • FAIRBANKS, ALASKA 99701 • IN JUNEAU: POUCH V • JUNEAU, ALASKA 99811

January 28, 1980

Sam Helms
Earth-Movers of Fairbanks, Inc.
925 Aurora Drive
Fairbanks, Alaska 99701

Dear Mr. Helms:

Thank you for taking the time to write regarding the proposed regulations of timber and material sales. Your letter was excellent and constructive.

Senator Don Bennett is Chair of the Administrative Regulation Review Committee and would be able to address your problem properly. As you know, Senator Bennett is also from Fairbanks and understands the situation with the shortened construction season.

I am sending him a copy of your letter in order to expedite action.

Thanks again for taking the time to write.

Sincerely,

Sally Smith
Alaska State Representative

EARTH-MOVERS OF FAIRBANKS, INC.

GENERAL CONTRACTOR
925 Aurora Drive
Fairbanks, Alaska 99701

Phone (907) 456-5087
(907) 452-5634

January 18, 1979

Representative Sally J. Smith
Capitol, Room 415
Pouch Y, State Capitol
Juneau, AK 99811

RE: Proposed Regulations Timber & Material Sales

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Sincerely,

EARTH MOVERS OF FAIRBANKS, INC.

Sam Helms

Alaska State Legislature

SENATOR
DON BENNETT
P.O. BOX 2301
FAIRBANKS, ALASKA 99707

Senate

LEGISLATIVE ADDRESS
POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811

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Don Bennett

cc: Administrative Regulation Review
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Alaska State Representative

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Sincerely,

EARTH MOVERS OF FAIRBANKS, INC.

Sam Helms

PROBLEM AREAS - REQUESTS

Area of residence FAIRBANKS, ALASKA 99701

Government Office/Position
WEIGHTS & MEASURES

Do you know of state regulations causing stress or hardship? Please explain.
WHY SHOULD A PRODUCE SCALE BE CONDEMNED IF IT IS BEING USED FAIRLY & IS WEIGHTING IN FAVOR OF THE CUSTOMER. GRANTED A SCALE FOR WEIGHING NEEDS TO BE ACCURATE, HOWEVER, WHY SHUT DOWN A BUSINESS EVEN THOUGH IT IS OPERATING IN THE CUSTOMER'S FAVOR.

If you would like to hear back from us about the problem, please print your name and address here.

TERRENCE P. McLEAN
MARKET BASKET #2
1255 AIRPORT ROAD
FAIRBANKS, ALASKA 99701

Thanks For Helping!

Area of residence Bethel

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

The current depreciation schedules used by the staff of APUC are very un-realistic in ALL cases. Example: 30 year life for meters — we're lucky if we get 8 years. I could go on & on.

If you would like to hear back from us about the problem, please print your name and address here.

HAL BORREGO
Box 333
Bethel, Alaska 99559

Thanks For Helping!

Area of residence Juneau

Government Office/Position
City/Borough Assemblyman

Do you know of state regulations causing stress or hardship? Please explain.

The hitchhiking law is widely ignored and goes contrary to people's needs.
How about a "hitchhikers' license" which a hitchhiker could show to a stopped motorist--and which would not be issued to felons, misdemeanants, alcoholics, etc.

How about raising the "drinking age" to 21--people injured by the present law are the general public and those from ages 15 to 19 given liquor by the younger-aged drinkers.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence ~~Ketchikan and~~ Southeast Alaska

Government Office/Position

Planning & Zoning

Do you know of state regulations causing stress or hardship? Please explain.

Yes. HB 66 exempting the State from following Borough ordinances re subdivisions.

If you would like to hear back from us about the problem, please print your name and address here.

John E. Benson
P. O. Box 7076
Ketchikan, Alaska 99901

Thanks For Helping!

Area of residence Juneau Alaska

Government Office/Position

Local Government

Do you know of state regulations causing stress or hardship? Please explain.

The recent Public Forum $360,000.00 T.V. Show on Juneau was a disaster — R. Holden + Anvik ought to be fried !

If you would like to hear back from us about the problem, please print your name and address here.

What a waste of Taxpayers $

Thanks For Helping!

Area of residence Bush community S.E. Alaska

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

St. Law requires schools to have floorescent lamps for lighting. These have been shown to cause hyperactivity in children & other problems. I don't want to send my child to a school with fluorescent lights.

If you would like to hear back from us about the problem, please print your name and address here.

Susan Taylor
Box 731
Port Alexander, Ak.
99836

Thanks For Helping!

Area of residence Kodiak Island

Government Office/Position

Teacher

Do you know of state regulations causing stress or hardship? Please explain.

State law decrees that public schools must be closed for Am. Thanksgiving (2 days), Am. Christmas, + Am. New Years. Our village does not celebrate these holidays - we celebrate Russian Thanksgiving (Dec. 4), Rus. Christmas (Jan. 7), + Rus. New Years (Jan. 14). It is a real hardship on our school program to have to be closed for both sets of holidays. I think the state has no right to "homogenize" the culture of Alaska villages this way, + should let the local school board make its own decisions.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence WRANGELL

Government Office/Position

School Superintendent

Do you know of state regulations causing stress or hardship? Please explain.

① School Bus Transportation (Forced to contract with COLA – But not enough Legislative money to cover)

② Legislative School Construction grants are administered By DOTPF. A minimum 3% take-off amount which reduces the actual amount the district receives plus creating a mass of red tape to prove to DOTPF you need it.

If you would like to hear back from us about the problem, please print your name and address here.

Robert McConnell
P.O. Box 651
Wrangell, AK. 99929

Thanks For Helping!

Area of residence Kenai Peninsula

Government Office/Position

Planning Commission

Do you know of state regulations causing stress or hardship? Please explain.

1. The delays, red tape and inefficiency ~~of the agencies involved in getting~~ a permit through the Corps of Engineers ~~is unbelievable.~~
2. D.O.T. We need less guardrails and ~~more pull-offs along our Alaskan~~ highways. Also, leave gravelpits open ~~& accessible for Motorhomes & Campers~~ to empty their holding tanks.
3. ~~Park Service. People do not want~~ the beaches at Deep Creek & Ninilchik ~~(or any other such place) changed~~ or "improved". Apparently God agrees ~~with us.~~

If you would like to hear back from us about the problem, please print your name and address here.

Peter O. Ernst

Star Rt. Mile 23

Seward, Ak. 99664

Thanks For Helping!

Area of residence Koyukuk
Alaska

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

I don't know of any regulations but why is it that many bigger city are getting more state jobs than the smaller rural Alaskan cities?

If you would like to hear back from us about the problem, please print your name and address here.

Koyukuk Village Council
Koyukuk Alaska
99754

Thanks For Helping!

Area of residence SE (SITKA)

Government Office/Position
CITY ENGINEER

Do you know of state regulations causing stress or hardship? Please explain.

NONE AT THE PRESENT TIME OR THAT I'VE NOTICED IN TWO YEARS - BUT THANKS FOR CHECKING. MY PROBLEMS USUALLY RELATE TO POLICIES EXPRESSED BY STATE AGENCIES BUT THAT'S ANOTHER STORY.

If you would like to hear back from us about the problem, please print your name and address here.

GENE REHFIELD // CITY ENGINEER
CITY * BOROUGH OF SITKA
BOX 79
SITKA, ALASKA 99835

Thanks For Helping!

Area of residence Ketchikan

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

Both bonding and wage rate laws/regulations drive the small contractor ~~of~~ out of State bidding, greatly raising state costs. (about double) I expect to write Freeman and Gardner a detailed letter.

If you would like to hear back from us about the problem, please print your name and address here.

Roland J. Stanton
3817 Fairview Ave
Ketchikan AK 99901
owner Stanton Homes,
10 employees

Thanks For Helping!

Area of residence CRAIG
ALASKA 99922

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

THE WINTER FERRY SCHEDULE TO PRINCE OF WALES ISLAND SHOULD BE REVIEWD. WE NOW NEED CONTINUOUS AURORA SERVICE TO 2000 OR MORE PEOPLE

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence Haines Borough

Haines, Alaska

Government Office/Position

Haines Borough Administrative Secretary

Do you know of state regulations causing stress or hardship? Please explain.

Annual Report, Assessment and Taxation for Dept. of Community and Regional Affairs, Office of State Assessor.

This report is needlessly detailed, asking for the number of cars, planes, mobile homes, snowmobiles, etc. within the area of assessment. For a small municipality which is not on computer pulling this information from the declaration forms is a month-long task and to no benefit to the Borough.

If you would like to hear back from us about the problem, please print your name and address here.

Stephanie K. Scott
Box H
Haines, Alaska 99827

Thanks For Helping!

Area of residence SITKA

Government Office/Position
LEGISLATURE OF ALASKA

Do you know of state regulations causing stress or hardship? Please explain.

I BELIEVE THE LEGISLATURE WOULD NOT ONLY DO THE CITIZENS A GREAT FAVOR, BUT ALSO THEMSELVES, BY ADJOURNING IN 100 DAYS... SO WE CAN GET BACK TO HUNTING WOLVES!

If you would like to hear back from us about the problem, please print your name and address here.

DICK ELLASON
BOX 143
SITKA, ALASKA

Thanks For Helping!

Area of residence KENAI PENINSULA

THANKS FOR THIS EFFORT
IT'S NEEDED

Government Office/Position

ASSEMBLYMAN, CHAIRMAN OF
THE FINANCE COMMITTEE

Do you know of state regulations causing stress or hardship? Please explain. YES THE ENVIRONMENTAL REGULATIONS BEING CRAMMED DOWN OUR THROATS. MY EMPLOYER WAS FORCED OUT OF BUSINESS OR FORCED TO PUT IN A SEPTIC FIELD (IT COST OVER $100,000 OF DESPERATELY NEEDED WORKING CAPITAL) WITHOUT ANY GRANTS OR EVEN LOW COST, OR EVEN HIGH COST LOANS AVAILABLE TO OFFSET THIS CASH EXPENDITURE MANDATED BY THE STATE. OUR ORGANIZATION HAD CLOSE TO 300 EMPLOYEES AT OUR PEAK (600 INCLUDING TURNOVER), AND OVER 700 FISHERMEN ACCOUNTS, 1000 PEOPLE MAY BE ADVERSELY AFFECTED

If you would like to hear back from us about the problem, please print your name and address here.

CARL E HILLE

BOX 576

KENAI AK 99611

WOULD BE MOST APPRECIATIVE IF I COULD TALK TO YOUR COMMITTEE, OR SOME MEMBERS, AT YOUR CONVIENCE, CARL HILLE

Thanks For Helping!

Area of residence Nome Alaska

Government Office/Position
City of Nome Acct/Psl Clk.

Do you know of state regulations causing stress or hardship? Please explain.

The state of Alaska is very Tardy in sending out Quarterly Report St. Income Tax forms. They usually arrive long after all other quarterly reports are done, long after the quarter is over, And after the due date if money is owed making businesses pay unnecessary penalties because the report is not in by the 5th of the month.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence Angoon, Alaska
Southeast

Government Office/Position
Regional School Board member
3yr. term - Chatham District
School

Do you know of state regulations causing stress or hardship? Please explain.
Having a member on our regional board from a community that has decided to stay outside our region with their school - Klukwan. I can't see how that member can truly be concerned with the problems of the region when his school isn't included. I would like to see that seat either eliminated or filled from a community that is involved in the regional school district.
Another regulation: the time change is so much of our business is done through Juneau and we are close enough geographically I'd like to adopt the time here.

If you would like to hear back from us about the problem, please print your name and address here.

Tilla M. Powers
Box 10
Angoon, Alaska 99820

Thanks for listening!

Thanks For Helping!

Area of residence McKoryuk

Government Office/Position

Council - Secretary

Do you know of state regulations causing stress or hardship? Please explain.

I do not know of any state regulations that bother me. Except a little about the game. We live mostly on games we catch, seal, walrus, etc. even musk-ox. (But we're not allowed to kill muskox)

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence Elim, Alaska 99739

Government Office/Position

Fish + Game

Do you know of state regulations causing stress or hardship? Please explain.

1. Limited Entry Permits - should turn more loose in this area since people didn't understand rules + lost permits also only way to make any money. 2. Fish Counters are put in too late and spend more time on recreation than counting fish.

If you would like to hear back from us about the problem, please print your name and address here.

Helen Davison

Elim, Alaska 99739

Thanks For Helping!

Area of residence Koyuk
AK

Government Office/Position

ALL STATE GOVT POSITIONS
Need To be heard over Radio
Before Each Sessions.

Do you know of state regulations causing stress or hardship? Please explain.

Commercial Fishing ENTRY
More STATE jobs FOR
Alaskans
STATE Community Revenue
Sharing PROGRAMS
ALL other outdated
Regulations Should be Destroyed.
STATE Capitol Should Remain
in JUNEAU.

If you would like to hear back from us about the problem, please print your name and address here.

Fred S. Dewey
Koyuk,
AK. 99753

Thanks For Helping!

Area of residence Bethel and Western Alaska.

Government Office/Position
Mayor of Bethel

Do you know of state regulations causing stress or hardship? Please explain.
Yes - the Limited Entry Fishing regulations - should be thrown out - also regulations regarding Herring Permitt holders and wording to change permitt holders who sold Fish. - instead of

If you would like to hear back from us about the problem, please print your name and address here.
of who got have a permitt.

Donald S. Elliott
Box 68.
Bethel, Alaska 99559.

Thanks For Helping!

Area of residence NANA REGION
Shungnak, Alaska

Government Office/Position
IRA COUNCIL MEMBER
SCHOOL BOARD SECRETARY

Do you know of state regulations causing stress or hardship? Please explain.
All state regulations are always in fine print so us NATIVES can't understand them. Please explain some of them.
REC.

If you would like to hear back from us about the problem, please print your name and address here.
REGINALD CLEVELAND
GENERAL DELIVERY
SHUNGNAK ALASKA
99773

Thanks For Helping!

Area of residence CHALAKLEET

Government Office/Position
ADVISORY SCHOOL BOARD

Do you know of state regulations causing stress or hardship? Please explain.

I'M NOT FAMILIAR WITH ANY BUT BUREAUCRACY IS DEFINETLY NOT HELPING ANYONE THE WAY IT SHOULD. THIS STATE GOV. SEEMS TO BE HAVING A CONTEST TO SEE WHO CAN SPEND THE MOST MONEY IN THE MOST RIDICULOUS WAY!

If you would like to hear back from us about the problem, please print your name and address here.

HELP!!!

Thanks For Helping!

Area of residence Salmon

Government Office/Position

City Council member

Do you know of state regulations causing stress or hardship? Please explain.

alcoholism, small business that was not affected by this before.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence McGrath

Government Office/Position

Office of the Lt. Governor

Do you know of state regulations causing stress or hardship? Please explain.

SOME PROBLEMS COME ABOUT BECAUSE EXISTING REGULATIONS ARE IGNORED AND NOT ENFORCED. THE DIVISION OF ELECTIONS HAS SCREWED-UP REAA BOARD ELECTIONS ONCE AGAIN. THAT OFFICE IS BLAIMING THE McGRATH CITY ADMINISTRATOR'S OFFICE FOR THE MISTAKE. AS 15.07.140 REQUIRES THE LT. GOVERNOR'S OFFICE TO HAVE POSTED IN EACH REGISTRAR'S OFFICE A CURRENT LIST OF REGISTERED VOTERS 40 DAYS PRIOR TO AN ELECTION. THAT WASN'T DONE AND THE CURRENT LISTS ARE OUT OF DATE. AS A RESULT OF HAVING TO USE OLD VOTER LISTS, A SCHOOL BOARD CANDIDATE WAS DISQUALIFIED BY JUNEAU FROM RUNNING.

If you would like to hear back from us about the problem, please print your name and address here.

Jim Zuelow, Superintendent
Iditarod Area School District
P. O. Box 105
McGrath, Alaska 99627

Thanks For Helping!

Area of residence NORTH SLOPE AREA

Government Office/Position

GOVERNING THE INUPIAQ PEOPLE

WITHIN THE NORTH SLOPE

Do you know of state regulations causing stress or hardship? Please explain.

YES, THE LANGUAGE WITHIN OUR AREA

IS HINDERENCE TO OUR INUPIAQ

PEOPLE, ~~BE~~ there FORE FURNISH WITH

TRANSLATORS OR TRANSCRIBE THE

REGULATIONS INTO INUPIAQ LANGUAGE.

If you would like to hear back from us about the problem, please print your name and address here.

Emily Wilson
North Slope Borough
Box 69
Barrow, ALASKA
99723

Thanks For Helping!

Area of residence Mile 57½ Parks Hwy, Prec. A 8

Government Office/Position

Deputy Mayor
Houston, AK

Do you know of state regulations causing stress or hardship? Please explain.

Move the Capitol. The people all Voted for it to Move. Why are they dragging their feet? It does not do any good to Vote. Why does the Governor Need help to spend the Billions? Use it for the Capitol Move.

If you would like to hear back from us about the problem, please print your name and address here.

FAYA M. PERKINS
S.R. Box 2755
WASILLA, AK. 99687

Thanks For Helping!

Area of residence Fairbanks

Government Office/Position
Asst. Chapter Manager
Assoc. General Contractors

Do you know of state regulations causing stress or hardship? Please explain.

Duplicate weekly reports:
on State or Fed jobs.
(1) O.F.C.C. (~~State~~ Federal)
(2) AkPlan (State & Fed)
(3) DOT&PF
(4) D.O.L.
all same rept.

If you would like to hear back from us about the problem, please print your name and address here.

C Bergman
1416 Gillam Way
Fairbanks, Ak 99701

Thanks For Helping!

Area of residence Palmer- Wasilla area

Government Office/Position

MATANUSKA-SUSITNA BOROUGH /

CONTROLLER

Do you know of state regulations causing stress or hardship? Please explain. AS #43 18 030, that requires a notice be mailed with tax bills regarding the total amount of state aid received in the past fiscalyear; the cost of preparing, inserting & mailing this notice, could be better served at reduced cost by publication in a paper.

Not a regulation, But, The failure of the State to fully fund School Debt. Re-imburser as well as other State Shared Revenues.

If you would like to hear back from us about the problem, please print your name and address here.

Walter Chappel, Controller
Matanuska-Susitna Borough
Box B, Palmer, Ak. 99645

Thanks For Helping!

Area of residence North Pole, Alaska

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

Renewal of Drivers license and car registration in person. Would like to see it changed because it is an inconvenience if a person is touring or traveling out of the country or if they are out of the state on business for an extended length of time. I realize there are just a few of us but it is an inconvenience.

If you would like to hear back from us about the problem, please print your name and address here.

Mr. Don Nelson

KJNP Radio - Box O

North Pole, Alaska 99705

Thanks For Helping!

Area of residence Kenai Peninsula

Government Office/Position
Mayor, Kenai Peninsula Borough

Do you know of state regulations causing stress or hardship? Please explain.

1. Ex Senior Citizen Exemption - Clarify
2. Wet land legislation Section 404 relation to DEC -
3. Regulation on timber Sales - DNR

If you would like to hear back from us about the problem, please print your name and address here.

Donald E. Gilman
Box 850
Soldotna, AK ~~99611~~ 99669

Thanks For Helping!

Area of residence Valdez

Government Office/Position

Valdez City Schools
Supt

Do you know of state regulations causing stress or hardship? Please explain.

The Dept of Ed has made a concerted effort to eliminate unnecessary & duplicative paperwork. Any Federal money administered through the state has an unavoidable amount of paperwork.

If you would like to hear back from us about the problem, please print your name and address here.

Larry LaBelle
P.O. Box 398
Valdez, Alaska 99686

Thanks For Helping!

Area of residence Fairbanks
Alaska
99701

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

in my job I have had trouble collecting DPW coupons f/ patients for their medications, particularly when it involves a foster child. We need a coupon every month & I have found that a majority of the welfare recipients don't make an honest effort to see that we receive one on time — so we can collect payment f/ the State.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence CHUATHBALUK, Alaska 99557

Government Office/Position

City Council Secretary

Do you know of state regulations causing stress or hardship? Please explain.

Control of building Bush high schools. School Districts in the Bush could build much cheaper and better if they had total control over the building of Bush schools!

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence North Pole, Alaska

Government Office/Position

Administrative Asst. City of North Pole

Do you know of state regulations causing stress or hardship? Please explain.

The ESD (Employment Security Division) paperwork is voluminous, particularly where CETA employees are concerned. The City must file 2 quarterly reports, one with a breakdown of CETA wages, the other with the unsubsidized portion of regular employees.

If you would like to hear back from us about the problem, please print your name and address here.

Jonni Fischer
City of North Pole
P.O. Box 509
North Pole, Alaska 99705

Thanks For Helping!

Area of residence St Michael

Government Office/Position

BLM

Crewboss

Do you know of state regulations causing stress or hardship? Please explain.

Unable to go out fires.

If you would like to hear back from us about the problem, please print your name and address here.

Elmer M. Cheemuk

St. Michael, AK

99659

Thanks For Helping!

Area of residence Montana Creek

Government Office/Position
Retired (resident of Alaska for 22 years.)

Do you know of state regulations causing stress or hardship? Please explain.

The regulations are fine it is the supervision that is bad. Example: Wasted time by Hiway Crews, this area alone is very bad. The supervisors are the worst. I refer to hiway stations such as the one at Willow. A time & motion study by other than State employees will bear this out.

If you would like to hear back from us about the problem, please print your name and address here.

Leroy J. Davis
Star Rt A Box 560E
Willow AK 99688

Thanks For Helping!

Area of residence FAIRBANKS

Government Office/Position

PRIVATE PRACTISE

MANAGER

Do you know of state regulations causing stress or hardship? Please explain.

Biggest problem is the administrative procedures, confusion & conflicts. There is often considerable inconsistency depending upon which representative of state administration is involved. Lot of difference between espoused ideas and actual practice.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence Allakaket, Alaska 99720

Government Office/Position
Allakaket City Council
City Manager (CETA funded)

Do you know of state regulations causing stress or hardship? Please explain.

This is A federal regulation but Maybe This Committee could help us. The is out of 20 wk. wait To get A job (Training) under CETA does not conform with our AREA. Because the only Job most of the Adults get is emergency fire-fighting, which is not to be considered As seasonal or part-Time Job. Thank You.

If you would like to hear back from us about the problem, please print your name and address here.

Eddie Bergman, City Manager
Allakaket City Council
Allakaket, Alaska 99720

Thanks For Helping!

Area of residence CHEFORNAK

Government Office/Position
TEACHER / PRINCIPAL

Do you know of state regulations causing stress or hardship? Please explain.
TITLE I Education.
While These are Federal
funds - I understand That The
State and District can
Negotiate The Project,
TITLE I Participation in
Each School Should be Voluntary
Not Mandated - Sometimes IS NOT
Good for Student's The way The results
read,

If you would like to hear back from us about the problem, please print your name and address here.
Howard Appel
CHEFORNAK, AK 99561

Thanks For Helping!

Area of residence Box 2649
Kodiak

Government Office/Position
District Sanitarian
Environmental Health

Do you know of state regulations causing stress or hardship? Please explain.
Re combine Division of Agriculture, (SEAFOODS) and Environmental Health. Also Ted Occupational Health from Dept of Labor

If you would like to hear back from us about the problem, please print your name and address here.
Harry Brighton
Box 2649
Kodiak, AK. 99615

Thanks For Helping!

Area of residence Kotzebue

Government Office/Position

This was addressed To me as Advisory School Board Member.

Do you know of state regulations causing stress or hardship? Please explain.

Recent Legislation abolishing Local School committees. Announcement came without warning that committees no longer existed. As a member this was stressful. I had To dig For an explanation and am still not completely sure of the whole thing.

If you would like to hear back from us about the problem, please print your name and address here.

Bernard J. Schwind
Box 60
Kotzebue, Alaska 99762

Thanks For Helping!

Area of residence Fairbanks

Government Office/Position
NONE

Do you know of state regulations causing stress or hardship? Please explain.
The Dept of Health and Social Services are continually harassing the business men all over the state. They seem to be interpreting some poor regulations into their own opinions - Bad policy -

If you would like to hear back from us about the problem, please print your name and address here.

Bill Hogan
431 Hallway Rd.
Fairbanks Alaska
99701

Thanks For Helping!

Area of residence 115 Badger Rd.
Airway Sub.

Government Office/Position
Planning & Zoning Commissioner
FBKB, AK 99701

Do you know of state regulations causing stress or hardship? Please explain.

① The loss of Alaska Housing Finance Money - Rural Fbks has no utilities & cannot qualify for Fed V.A. or FHA money - (it would take nearly a year to process Fed V.A.) - How about some support for Borough Bond Money!!!

If you would like to hear back from us about the problem, please print your name and address here.

Sharon Mavencamp
P.O. Box 5634
North Pole AK
99705

Thanks For Helping!

Area of residence P.O. Box 2698
Kodiak, Alaska
99615

Government Office/Position
Assistant Harbor Clerk

Do you know of state regulations causing stress or hardship? Please explain.
One regulation the state doesn't have is a very sore sight to me!! Alaska is a very beautiful State & should have a bottle law to help keep it beautiful.

If you would like to hear back from us about the problem, please print your name and address here.
Holly PETERSON
S.A.A.

Thanks For Helping!

Area of residence Emmonak, Alaska 99581

Government Office/Position

Simon P. Moses Tribal Director

Do you know of state regulations causing stress or hardship? Please explain.

for the last 7yrs we have been Trying to get gravel roads in and I have gone to Nome to get the estimate of the cost which they gave me the cost would be$950,000.00 Now that the gravel has been put in on the airport and has not been maintaned it had holes and we had three actions involved with planes but no peole got hurt.

If you would like to hear back from us about the problem, please print your name and address here.

SIMON P. MOSES TRIBAL DIRECTOR

EMMONAK, ALASKA 99581

Thanks For Helping!

Area of residence FAIRBANKS
NORTH STAR BOROUGH

Government Office/Position
BOROUGH ASSEMBLY
FAIRBANKS NORTH STAR BOROUGH

Do you know of state regulations causing stress or hardship? Please explain.

ABOVE ALL, THE ABC. BOARD AUTHORITY IN LOCAL MATTERS

AND SECOND, THE APOC REGULATIONS THAT TEND TO DISCOURAGE POLITICAL ACTIVITY.

If you would like to hear back from us about the problem, please print your name and address here.

ANDY KARELLA
BOX 1615
FAIRBANKS, AK 99707

Thanks For Helping!

Area of residence St Michael AK 99659

Government Office/Position
MAYOR

Do you know of state regulations causing stress or hardship? Please explain.
Fish & Game repeatedly refuses to open our area for commercial salmon fishing. We are the only village in a huge area that doesn't have commercial salmon fishing.

If you would like to hear back from us about the problem, please print your name and address here.
Jerry AUSTIN
St Michael
AK 99659

Thanks For Helping!

Area of residence McGrath, Alaska

Government Office/Position

City of McGrath

City Administrator

Do you know of state regulations causing stress or hardship? Please explain.

The Area Court Administrator of the Fourth Judical District will not fill the McGrath's Magistrate position because of a "lack of caseload". It appears this individual makes his own regulations.

If you would like to hear back from us about the problem, please print your name and address here.

Robert S. Juettner, City Administrato

P.O. Box 57

McGrath, Alaska 99627

Thanks For Helping!

Area of residence YAKUTAT
Alaska

Government Office/Position

~~planning + Zoning~~ Chair person
overall Economic development - Chairperson

Do you know of state regulations causing stress or hardship? Please explain.

The State land 'give Aways' should be co-ordinated with local communities. It could interfere with Soc planning, and adverse effect the local infrastructer. The State needs planning, before jumping.

If you would like to hear back from us about the problem, please print your name and address here.

Caroline C. Powell
Box 158
YAKUTAT, Alaska 99689

Thanks For Helping!

Area of residence Nulato AK. 99765

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

① Regulations on fishing + hunting have harmful effect on subsistence hunters and fishermen

② Negotism regulations on CETA funded jobs if applied strictly in small community discourage people from serving on city or village councils.

③ Too much bureaucratic paperwork everywhere you look it bogs everything down

If you would like to hear back from us about the problem, please print your name and address here.

Andy Durny
Nulato, Alaska
99765

Thanks For Helping!

Area of residence Buckland
Alaska 99727

Government Office/Position

None

Do you know of state regulations causing stress or hardship? Please explain.

Cooperation sure
no help in this
part of Alaska

If you would like to hear back from us about the problem, please print your name and address here.

Delbert Cole
Buckland
Alaska 99727

Thanks For Helping!

Area of residence De Ha Junction
AK

Government Office/Position
School Board Member

Do you know of state regulations causing stress or hardship? Please explain.
Steps for negotiations with teachers unions needs some clarification along with handling of local campaign funds (I guess I'm asking for more clout)

If you would like to hear back from us about the problem, please print your name and address here.
Cleeta P. Barger
POB 106
DeHa Junction, AK 99737

Thanks For Helping!

Area of residence Houston, Alaska

Government Office/Position

City Clerk, Houston

Do you know of state regulations causing stress or hardship? Please explain.

Community + Regional Affairs 1976 Elderly Housing Bond Fund - Elderly Housing Administrator.

Regulations being applied are not in accord with public hearings and legislative intent Representatives Pat Carney know our problems.

If you would like to hear back from us about the problem, please print your name and address here.

ELSIE O'BRYAN, CITY CLERK

SR Box 2727

VIA WASILLA, ALASKA 99687

Thanks For Helping!

Area of residence Barrow, North Slope Borough

Government Office/Position
Coordinator-Children's Receiving Home
Health Educator

Do you know of state regulations causing stress or hardship? Please explain.

Licensing regulations for residential facilities in rural areas. Fire, Sanitation, Environmental Health, Child Care. Why aren't they all in one place?

If you would like to hear back from us about the problem, please print your name and address here.

Carl M. Hild
P.O. Box 371
Barrow Alaska 99723

Thanks For Helping!

Area of residence 3rd Division at Dillingham

Government Office/Position

Mayor of Dillingham

Do you know of state regulations causing stress or hardship? Please explain.

We have been hassled more than seems necessary about our sewer system and also about our solid waste disposal area

If you would like to hear back from us about the problem, please print your name and address here.

David B. Carlson
Box 208
Dillingham, AK
99576

Thanks For Helping!

Area of residence DELTA JCT.

Government Office/Position

WATER QUALITY ENVIRONMENT GUYS

Do you know of state regulations causing stress or hardship? Please explain.

When you buy a new house, the water and sewer must be inspected. However, a work backlog doesn't allow the inspections to be made before closing. They came 9 months after my closing & said it didn't pass. Now Jim stuck with the bill.

If you would like to hear back from us about the problem, please print your name and address here.

W. J. HAGEN
Box 629
Delta Jct, Ak 99737

Thanks For Helping!

Area of residence Calista (Nunivak Island)

~~Government Office~~/Position

ASI guide

Do you know of state regulations causing stress or hardship? Please explain.

Guiding regulations for Native residents were unable to be advanced on our tickets due to red tape/experience requirements and recommendations from registered guides

If you would like to hear back from us about the problem, please print your name and address here.

LARSON KING
Box 68
NUNIVAK ISLAND
McKoryuk, Alaska 99630

Thanks For Helping!

Area of residence Box 237
Anchor Point 99556

Government Office/Position
Chairman - Kenai Pen
Borough Planning Commission

Do you know of state regulations causing stress or hardship? Please explain.
The state Dept. of Environmental
conservation creates a
lot of paperwork and
cost on subdivisions and
does not really help
the consumer in any
relation to cost or lost
time.

If you would like to hear back from us about the problem, please print your name and address here.
Jim Jacobs
Box 237
Anchor Point AK 99556

Thanks For Helping!

Area of residence Kodiak Island

Government Office/Position

Teacher

Do you know of state regulations causing stress or hardship? Please explain.

It is absolutely ridiculous to recertify teachers on the basis of whether or not they have accumulated 6 college credits in the last 5 years. College credits do not in any way make a good, dedicated teacher. And this works a great hardship on those of us who live in remote villages where there is no college available.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence Wasilla

Government Office/Position
State Representative

Do you know of state regulations causing stress or hardship? Please explain.
Requirement for Trade Post Permits for farm equipment.
Health Certificate for Truck drivers

If you would like to hear back from us about the problem, please print your name and address here.
Pat Carney
SR Box 3051 Wasilla Alaska 99687

Thanks For Helping!

Area of residence Bethel, Alaska

Government Office/Position

Wife and Mother - (I am helping raise the future of alaska) Help me save Children from traffic accidents. A new problem developing in the Bethel Area.

Do you know of state regulations causing stress or hardship? Please explain.

We desperately need Cross walks and traffic regulation at watsons Corner. This is a state Road. It is an intersection with 3 way traffic. Many children must cross it going to & from School. Our traffic has greatly increased in the past year, making this a very dangerous area that does not even have cross walks. We were told that the state would do nothing about this problem as we have not yet had a death or permant injury caused by an accident on this Corner. I would like to think our State would take action

If you would like to hear back from us about the problem, please print your name and address here.

Elizabeth M Twitchell

Box 703

Bethel Alaska

Thanks For Helping!

Area of residence FAIRBANKS

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

"DOUBLE DUTY" FILING OF MINING CLAIM LOCATIONS AND ASSESSMENTS -- THE AGENCIES, WHILE VERY BUSY AT PRESENT, SHOULD WORK TO HELP THE OWNERS RATHER THAN LOOK FOR "FORFEIT" TIME.

If you would like to hear back from us about the problem, please print your name and address here.

HARVEY MARLIN
665 10 St
FAIRBANKS, AK 99701

Thanks For Helping!

Area of residence KENAI - SOLD-
OTNA

Government Office/~~Position~~
CITY ATTORNEY II

Do you know of state regulations causing stress or hardship? Please explain.
① Public officials comm. — we fill out all these reports, forms etc. They had an investigation of a Soldotna Election + campaign practices, spent $10,000 dollars at cost of State + local funds & Did absolutely nothing. still in force

If you would like to hear back from us about the problem, please print your name and address here.
Theo L. CARSON, JR.
P.O. Box 1839
SOLDOTNA, AK

Thanks For Helping!

Area of residence Atmautluak

Government Office/Position

None

Do you know of state regulations causing stress or hardship? Please explain.

None

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence Nome Alaska

Government Office/Position
Clerk, Treasure

Do you know of state regulations causing stress or hardship? Please explain.
None Known at present time

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

2271-

Area of residence _____

_____

Government Office/Position

_____

_____

Do you know of state regulations causing stress or hardship? Please explain.

_____

_____

_____

_____

_____

_____

_____

If you would like to hear back from us about the problem, please print your name and address here.

THOMAS, Alowa

Box 131

SAVOONGA, AK 99769

Thanks For Helping!

Area of residence BARROW, ALASKA

Government Office/Position

NORTH SLOPE BOROUGH

PERSONNEL OFFICER

Do you know of state regulations causing stress or hardship? Please explain.

If you would like to hear back from us about the problem, please print your name and address here.

LINDA JOY BROWER

P. O. BOX 256

BARROW, AK. 99723

Thanks For Helping!

Area of residence Akiak, Alaska 99553-2

Government Office/Position

City Council Secretary

Do you know of state regulations causing stress or hardship? Piease explain.

None

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

Area of residence City of AKolmiut
Nunapitchuk, AK.
99641

Government Office/Position
Mayor

Do you know of state regulations causing stress or hardship? Please explain.

Revenue Sharing Program:
The annual cut of 15% and
25% is hurting the ~~cities~~
small rural cities. Increase
in allocation needs to be
considered plus do away with
the cut of 15% and 25%



If you would like to hear back from us about the problem, please print your name and address here.

City of AKolmiut
Mayor Z.C. Chaliak, Sr.
Nunapitchuk, AK. 99641

Thanks For Helping!

Area of residence Saxman
Indian Village

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

We are having ~~hard~~ hard time on hand troll We dont like to go on welfare. just because we never sold fish on the magic year we are deny Power for troll our limit Entry permit now I need it worst then ever I had surgary its going to be tough to hand troll, nobody ask what happen our girdies broke

If you would like to hear back from us about the problem, please print your name and address here.

William G. Kashneick
Rt. 1 Box 376
Ketchikan, Alaska 99901

Thanks For Helping!

Area of residence Sitka
Alaska

Government Office/Position 111111
Planning & Zoning Commission
City & Borough of Sitka. Member

Do you know of state regulations causing stress or hardship? Please explain.

In an area where
most workers get off
at 4:30 PM or 5:30 PM.
it would seem that
the State Fish & Game could
stay open until 6 PM one
night a week. This would
help hunters & fisherman in obtaining
licenses & information

If you would like to hear back from us about the problem, please print your name and address here.

Michael Trent
Box 766
Sitka Alaska
99835

Thanks For Helping!

Area of residence KETCHIKAN

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

1- PRIOR APPROVAL BY STATE BEFOR ARMY CORE PERMITS ARE CONSIDERED.

2- DELAYS IN RESPONSE FOR TIDE LAND LEASES. DUPLICATION OF STATE & BOROUGH IN COSTAL LAND USE CONTROLS.

If you would like to hear back from us about the problem, please print your name and address here.

F.A. SEYMOUR
LAKE FOX CORP.
P.O. BOX 8558
KETCHIKAN AK. 99901

Thanks For Helping!

Area of residence Hoonah
ALASKA

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

Yes, Limited ENTRY!
In 1968, I went into Partnership on a boat, (a gillnetter) I invested 1/3 of the Cost of a 40' boat, + Gear plus the license fees, + now I am not eligible for a permit. Why? I was a gear license holder in 1973, in AREA M

If you would like to hear back from us about the problem, please print your name and address here.

George N. Mills
P.O. Box 296
HOONAH, ALASKA
99829

Thanks For Helping!

Area of residence SITKA, AK.

Government Office/Position

Fisherman
"Use'd to be" until
limited Entry

Do you know of state regulations causing stress or hardship? Please explain.

"LIMITED ENTRY"!
I have been
a Life Time Alaskan
& a Fisherman,
& denied A PERMIT.
The Program
discriminates against
INDIANS!!

If you would like to hear back from us about the problem, please print your name and address here.

ALFRED HAWKINS
Box 683
SITKA, Alaska

Thanks For Helping!

Area of residence SITKA, ALASKA 99835

Government Office/Position

MUNICIPAL CLERK

CITY AND BOROUGH OF SITKA.

Do you know of state regulations causing stress or hardship? Please explain.

If you would like to hear back from us about the problem, please print your name and address here.

Thanks For Helping!

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Alaska State Legislature
Administrative Regulation Review Committee
Senator Don Bennett, Chairman
Nerland Building, Suite 219
545 Third Avenue
Fairbanks, Alaska 99701

My peeve is about that completely unnecessary Public Offices Commission!

We have lost many potential GOOD candidates who do not wish to have their privacy invaded to the extent required by this superfluous law. Some excellent professional people and businessmen who served in governmental areas would not re-run for office because of it.

The candidates who do file are absolutely bewildered and perplexed by the innumerable rreports they must file -- or be fined substantial amounts.

Our State government must be wasting thousands of dollars on this office which could more prudently be spent on <u>useful</u> services. During the last Presidential/State election, we received copies of all the candidates reports -- and no one even asked to see them. If they had, I doubt if they could have understood them as the number of copies of various reports for each candidate proved so voluminous it would have taken a Philadelphia lawyer to figure out what they said, if anything. These were probably shipped to every municipal office in the State at tremendous expense; also, it took a great deal of the Clerks' time to set up files on them.

We receive innumerable forms, printed instructions and several types of manuals and they, along with the candidates files we are required to keep, take up a great deal of storage space. And for what purpose?

The State should most certainly address this monsterous waste of the taxpayers' dollars on this office with its useless forms and files! Any Alaskan of average intelligence is capable of choosing his own candidate without resorting to this Kangeroo Court.

Myrtle V. Flynn,
Municipal Clerk
City and Borough of Sitka.

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P. O. BOX 197 . DILLINGHAM, ALASKA 99576 . AREA CODE (907) 842-5251

September 7, 1979

Alaska State Legislature
Administrative Regulation Review Committee
Senator Don Bennett, Chairman
Nerland Building, Suite 219
545 Third Avenue
Fairbanks, Alaska 99701

Dear Senator Bennett:

Reference is made to your pamphlet recently received in this office concerning "excessive state regulations."

For years we have prepared annual reports to the APUC which require data that we have to submit to the Rural Electrification Administration, U.S. Dept. of Agriculture but in different form.

It amazes me why each government agency which regulates or otherwise controls non-profit cooperative utilities periodically requires a different set of forms. The ultimate result does nothing more than raise the cost of utility service to the consumer.

I am enclosing a copy of my letter of April 13, 1979 to the APUC which addresses this problem. As a matter of interest, the letter was never answered.

Thank you for your interest.

Yours very truly,

DAVID F. BOUKER
Manager

Encl

DFB:ka

NUSHAGAK ELECTRIC CO-OPERATIVE, INC.

P. O. BOX 197 . DILLINGHAM, ALASKA 99576 . AREA CODE (907) 842-5251

April 13, 1979

Alaska Public Utilities Commission
1100 MacKay Building
338 Denali Street
Anchorage, Alaska 99501

Dear Commissioners:

This is in response to your annual reports required by all utilities as referenced in Alaska Statutes 42.05.451 and prepared with the perspective of both Nushagak Electric Co-operative, Inc. (NEC) and Nushagak Telephone Co-operative, Inc. (NTC).

In the calendar year 1978, NTC had $375,000 gross operating revenues. This sum has the dubious distinction of qualifying this Co-operative organization as a Class B telecommunication utility which substantially changes our reporting requirements. Your agency requires over 70 pages of miscellaneous statistics in the Class B annual report. This requirement is particularly onerous especially in view of the fact that our banker, the Rural Electrification Administration, is fully satisfied with a much more compact and readable form that you do not utilize. This would seem to be not only an unnecessary waste of taxpayer's money but, more importantly, the subscriber's investment in this Co-operative.

On January 25, 1979, Governor Hammond addressed "duplication" in his statement on Over Regulation. This is a very real problem now that is facing all utilities but having the greatest effect on the smaller utilities. It should also be recognized that a major contribution to the overwhelming paperwork buildup in recent years are problems associated with the easement and rights of way acquisition. This is not an area of your responsibility obviously, but I believe that you should be aware of all trends that affect utility operations to any significant degree.

We have discussed the possibility of the APUC utilizing various REA forms but the major objection has been that the REA forms are not common to all utilities. This is certainly true, but it would appear that the public good would still be served, perhaps even better, if all REA financed utilities were allowed to submit copies of all applicable REA year end forms to the APUC. After all, they are standardized over all

APUC
1100 MacKay Bldg.
Anchorage, Ak. 99501

April 13, 1979

rural areas of the nation and have presumably served the Rural Electrification Administration as well as the subscriber/consumer well. It is pretty hard to set one's sights any higher than that for the public good.

In conclusion, I do wish you would reconsider some of your reporting requirements. They are time consuming and expensive especially so to the smaller utilities. They add to the expanded burden of work required to keep the phones working and the lights on.

Thank you.

Yours very truly,

David F. Bouker

DAVID F. BOUKER
Manager, Nushagak Electric and
Telephone Co-operatives

DFB:ka

Area of residence 224 Illinois St. - Fairbanks, AK

Government Office/Position

Business man

Do you know of state regulations causing stress or hardship? Please explain.

The scale houses (trucks) They have been "intolerable" for the past 5 yrs. 400 truckers voted against Egan because of this situation Egan lost by less than 300 votes. The alone did it, for sure!

If you would like to hear back from us about the problem, please print your name and address here.

Robert H Miller
Box 729
Fairbanks AK 99707

Thanks For Helping!

Robert Miller Enterprises
HEADQUARTERS - MANLEY HOT SPRINGS, ALASKA
OFFICE - P. O. Box 729 • FAIRBANKS, ALASKA 99701

The other "absolutely intolerable" situations are, as listed:

1. Unions. They are not (never have) needed in Alaska.
2. Gov't. (city, boro, state and mostly federal) rules and regulations have become intolerable.
3. People have been taught by our gov't. to sit on their butts. The average person will not work! Do away with all welfare (only for the needy) and give-away programs! Get them back working again. There are thousands of jobs available for anyone willing to work for the right price!
4. The only highly mineralized area left in Alaska is the Brooks Range area. Now that the road is built our gov't. has been doing all in their power to keep people out of there! It just makes sense!!

(over)

All these points have run me and several others out of business. I never hope to hire a person in my lifetime I've lost all I care to trying to cope with all these "intolerable stresses, strains and problems"!

It seems the "way of life" now is to lie, cheat, steal, "pay-off systems and rip-offs"! It all must get in this "groove" in order to make a profit!!

If you think all the above remarks are exaggerated you are badly mis-taken. They all are facts!

Keep fighting
Sincerely
Bob Miller

Area of residence KODIAK

Government Office/Position

CITY ENGINEER

Do you know of state regulations causing stress or hardship? Please explain.

NEW REQMT. FOR ALL CONST. TO BE APPROVED BY STATE FIRE MARSHALL UNLESS EXEMPTED. KODIAK HAS A BLDG INSP. WE HAVE ASKED FOR EXEMPTION FOR RESIDENTIAL CONST. I HAVE NOT RECEIVED THE EXEMPTION.

If you would like to hear back from us about the problem, please print your name and address here.

JOHN C. STAFFORD
BOX 1397
KODIAK, AK. 99615

Thanks For Helping!

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF TECHNICAL SERVICES

703 W. Northern Lights Blvd.
Anchorage, Alaska 99503

August 27, 1979

Kodiak
P.O. Box 1397
Kodiak, AK 99615

To Whom it may concern:

Would you please send me two copies of your platting regulations. My address is:

Ronald L. Thiel
Survey Coordinator
Division of Technical Services
Department of Natural Resources
State of Alaska
703 W. Northern Lights Blvd.
Anchorage, Alaska 99503

Thank you for your cooperation.

Very truly yours,

Claud M. Hoffman
Acting Director
Division of Technical Services

FOR: Ronald L. Thiel
Survey Coordinator

CLASSIC! SIGNED BY SOMEONE FOR SOMEONE ELSE WHO WAS SIGNING FOR A THIRD PARTY.

10J16LH

September 20, 1979

Administrative Regulation Review Committee
Senator Don Bennett, Chairman
Fairbanks

Senator Bennett,

At its meeting of September 12, 1979, the City Council of Kaltag responded to your card as enclosed.

First, the council is displeased with local law enforcement: the trooper does not come often enough; he comes too late after something happens; usually nothing is done to punish criminals; people arrested are usually released on their own recognizance--the council wants convicted criminals in jail.

Second, the council is severely upset about state welfare payments: money that is supposed to go to children often goes to drink. The council suggests that welfare recipients be given food stamps and clothes or credit with mailorder houses such as Sears or Penny's but not money.

Thank you for this opportunity and for your time and attention.

David Cornberg
Village Information
Assistant/Paraplanner

Kaltag, Alaska 99748

Area of residence Kaltag
Alaska 99748

Government Office/Position
2nd class city

Do you know of state regulations causing stress or hardship? Please explain.
(see attachment)

If you would like to hear back from us about the problem, please print your name and address here.
Kaltag City Council
Kaltag
Alaska 99748

Thanks For Helping!

9/4/79

Dear Sir,

I'm writing this very slowly because I know most of you appointed helpers, I have to pay, can't read very fast.

My first complaint: Why didn't you send me one of these forms? I had to get mine from a friend who was going to throw hers away. Put me on your mailing list. I'm paying for it. I want a copy of everything this state mails out free. Cause it ain't free, I pay.

Another complaint: TAXES! What's this I hear about extra money in the state treasury because of the oil benefits? And you guys want to know how to spend the overage? Bullshit! Where does it say you idiots have to spend every dime of my money? Why don't you watch it and pay attention to the ads. Banks will pay you to bank my money. I am really sick of the way this State handles my money. Ever heard of Proposition 13? Keep up the poor work and you'll have it delivered to you, by guys like me, THE GUYS WHO PAY THE BILL.

Land. Reform. Homestead. You know, if the majority of the people want something, could be the law should be changed. The Real Estate Lobby going to gag cloth you when I quit paying you? Think about it. You're pissing me off so why should I pay you?

Capital Move. Shit. Maybe when we've got some smart guys working for us we'd

like some access to the capital, but with the current bunch they could just as well be on the dark side of the moon. What the hell, who cares if I voted in 1974 to move it? Or in 76' to move it to Willow? Real Estate Lobby. Good going Alaska.

$30,000 lost from Anchorage Airport parking. Tell me, who's in jail?

The Director of the Child Support Enforcement Agency violates civil rights. You people decided not to raise his budget. Good for you! How come that asshole isn't in jail?

How come when I see a guy filling a chuck hole in a road I see two guys in a pickup watching him?

Why is it in Bethel all the state employees use state transportation 24 hours a day? Don't you give them any time off? Or am I paying for their personal transportation?

Why is there an Alaska Transportation Commission if not to guarantee monopolies?

Why can't I hunt on ALL State Lands?

Why are unemployment benefits so low? After all the people who become unemployed are the same ones who pay your excessive salarys. Don't they deserve something back?

I would support a law to require everyone who works for the state to have a mandatory two year break every five years. I'll bet we could really weed out a lot of dead wood.

I would also support a law requiring everyone 18 or older to become proficient in the use of firearms to protect themselves from the federal and state governments.

It has started in New York City. When do you think it will reach here? It will you know. People are sick and tired of paying for programs we don't want and don't need. And not everyone votes Republican like me. Some people really like bleeding heart liberals. Friends of Animals; Friends of Seals; Friends of Whales; Ted Kennedy: Like that. Not me man, I hate liberals.

Are you a liberal?

Richard R Gold

Area of residence _____

_____

Government Office/Position

_____

_____

Do you know of state regulations causing stress or hardship? Please explain.

_____

_____

_____

_____

_____

_____

_____

If you would like to hear back from us about the problem, please print your name and address here.

RICHARD R. IZOLD

2100 NORTH STAR

ANCHORAGE, AK 99503

Thanks For Helping!

Area of residence Barrow Alaska

Government Office/Position

City of Barrow/City Manager

Do you know of state regulations causing stress or hardship? Please explain.

Yes The rules and regulations Concerning Bingo Permits and the inability of the Audit Division staff To read letters. They Are refusing to renew a Bingo Permit and absolutly won't accept our explanations.

If you would like to hear back from us about the problem, please print your name and address here.

Bryan mac lean

Box 290

Barrow Ak 99723

Thanks For Helping!

15 AAC 05.400 Bingo
AAC Page 15-12 (Corrected)

From the Desk of

SENATOR DON BENNETT

9/10/79

Spoke with Terry Earley, C&RA, 465-4730, today regarding the proposed regulation on property tax exemptions for senior citizens. No regulation has been drafted yet, but the AG's office suggests that they clarify the statute.

The statute says that senior citizens are exempt on permanent place of abode. Right now permanent place of abode is defined as their home and such land surrounding it for convenient use. C&RA wants to clarify that to mean 1 acre urban or 5 acres rural.

The exemptions are granted by the municipalities and are reimbursed by the state. The local assessors got together and decided on these figures, so C&RA wants to clarify their position and make it the same for everyone.

They will send us a copy of the regulation when it's drafted.

To Don

Date 9/5 Time

WHILE YOU WERE OUT

M Hugh Malone (Chm)

of 283-7743

Phone 283-7733 (of)

TELEPHONED		PLEASE CALL	X
CALLED TO SEE YOU		WILL CALL AGAIN	
WANTS TO SEE YOU		RUSH	

RETURNED YOUR CALL	

Message C+RA - homeowners property tax exemption for senior citizens - adopt reg. retroactive

Operator

02-097 (Rev. 5/75)

Area of residence Kenai

Government Office/Position
Hugh Malone

Do you know of state regulations causing stress or hardship? Please explain.

Don
You should take
a look at the Dept
C&RA's managed
"guidelines" for homeowners
tax exemption for
senior citizens. They're
all wet. Thanks Hugh

If you would like to hear back from us about the problem, please print your name and address here.

Box 9
Kenai AK 99611

Regs are not written yet. They will be sent out after which finished.

Thanks For Helping!

Area of residence Kwethluk

Government Office/Position
City Administrator for
City of Kwethluk

Do you know of state regulations causing stress or hardship? Please explain.
The 85% population factor which is used to distribute the State Revenue Sharing funds instead of the full entitlement budgeted for each municipality in the State of Alaska.

If you would like to hear back from us about the problem, please print your name and address here.

MAX P. ANGELAN
KWETHLUK ALASKA
- 99621 -

Revenue Sharing 19 AAC 30.010 & 20

Thanks For Helping!

page 19-22.1

Area of residence Chena Ridge
Fairbanks

Government Office/Position
Dept of Transportation
Dept of Highways

Do you know of state regulations causing stress or hardship? Please explain.
I have serious
technical doubts on
The need To ban
studded Tires during
Snow free months

If you would like to hear back from us about the problem, please print your name and address here.
Ed Clarke
PO Box 80891
Fairbanks 99708

Thanks For Helping!

This law pertains to roads of sufficient width and condition to permit vehicles to pass, without injury to their tires or other parts, and without danger of collision. Vogler v. Greimann, 12 Alas. 19, 78 F. Supp. 575 (D. Alas. 1948).

On a two lane highway, even a one foot obstruction could easily cause a following car to swerve into the opposite lane to clear a parked vehicle. This would interfere with the normal flow of traffic and amount to a violation under this section. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

This section is not an exclusive list of service vehicles. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

A driver, while not operating a professional service vehicle, may be engaged in the same activity as a service vehicle would have been. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

Such as pulling over to aid occupants of overturned car. — This section describes service vehicles as buses, garbage trucks, tow trucks or ambulances, but a reasonable construction of the statute would hold that one who pulled his car over to the side of the road in an emergency situation in order to aid the occupants of an overturned car, was acting in a service capacity. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

A person who pulled over to the side of the road in an emergency situation in order to aid the occupants of an overturned car, apparently parking as far over on the right as he could given the snow conditions and the presence of a ditch on the side of the road, and who also turned his emergency flasher lights on, was entitled to make a brief stop on the roadway as necessary in the performance of samaritan efforts. Beaumaster v. Crandall, Sup. Ct. Op. No. 1589 (File No. 2845), 576 P.2d 988 (1978).

Sec. 28.35.150. Unlawful to interfere with or destroy official traffic control device or highway construction; action by state for damages. Repealed by § 25 ch 144 SLA 1977.

Editor's note. — The repealed section derived from § 50-5-8, ACLA 1949; § 8, ch. 241, SLA 1976.

Sec. 28.35.155. Operation of vehicle with certain tires prohibited. (a) It is unlawful to operate a motor vehicle with studded tires or tires with chains attached on a paved highway or road from May 1 through September 15, inclusive, north of 60° North Latitude and from April 15 through September 30, inclusive, south of 60° North Latitude. The commissioner of public safety shall by emergency order provide for additional lawful operating periods based on unusual seasonal or weather conditions. An emergency order adopted under this section is not subject to the Administrative Procedure Act (AS 44.62). Upon application a special individual traction permit may be issued allowing the operation of a motor vehicle with studded tires or chains at any time at the discretion of the vehicle owner. The fee for the special individual permit is one-third of the annual license tax applicable to that class of vehicle under AS 28.10.200. The department may provide an appropriate sticker or other device identifying the vehicle to which the permit applies.

(b) In this section "studded tire" means a tire with metal studs or spikes imbedded in the periphery of the tire surface, and protruding not more than one-fourth inch from the tire surface. (§ 9 ch 241 SLA 1976)

Area of residence FAIR BANKS ALASKA
Steese Hwy. 6.2 m.

Government Office/Position

Do you know of state regulations causing stress or hardship? Please explain.

Yes The HANDLE BAR LAW ON MOTORCYCLES, LAW STATES, 15 inches, From HIGHEST PART OF HANDLE BARS or GRIP TO LOWEST PART OF SADDLE or SEAT. (M NOW MOTORCYCLES DONT EVEN MEET STANDARD LAW.) I OWN A BUSINESS IN FBKS AND I'M A REGESTARD VOTER. I WANT SOMETHING DONE ABOUT IT.

If you would like to hear back from us about the problem, please print your name and address here. Mark.

MARK Greer
SR- 57504-C
FAIR BANKS ALASKA
99701

Thanks For Helping!

Automotive Engineers in effect on the effective date of this chapter. (Eff. 12/15/61, Reg. 3; am 8/10/66, Reg. 22; am 12/31/69, Reg. 31)

Authority: AS 28.05.030
AS 28.05.040

13 AAC 04.275. SAFETY CHAIN ON TOWED VEHICLE. A towed vehicle shall, after January 1, 1971, be coupled to the towing vehicle by means of a safety chain, chains, cable or equivalent devices in addition to the regular trailer hitch or coupling. This requirement does not apply to a semitrailer having a connecting device composed of a fifth wheel and kingpin assembly nor to a pole or pipe trailer or dolly. No more slack may be left in safety chains, cables or equivalent devices than is necessary to permit proper turning, and the safety chains, cables or equivalent device shall be connected to the towed and towing vehicle and to the drawbar so as to prevent the drawbar from dropping to the ground if the drawbar fails and shall be of sufficient strength to retain control of the towed vehicle in the event of failure of the regular hitch or coupling. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.280. MOTORCYCLE, MOTOR SCOOTER–MIRRORS, GOGGLES, FACE SHIELD AND HELMET. (a) A person may not, on and after January 1, 1971:

(1) operate a motorcycle or motor scooter that is not equipped with a mirror on each side of the handlebars. The two mirrors shall be located so as to give the driver a complete view of the highway for a distance of at least 200 feet to the rear of the motorcycle or motor scooter;

(2) operate a motorcycle or motor scooter that does not have a windshield which rises at least 15 inches above the handlebars unless he wears goggles or a transparent face shield meeting the requirements of sec. 300 of this chapter;

(3) operate or ride upon a motorcycle or motor scooter unless he wears on his head a protective helmet meeting the requirements of sec. 300 of this chapter. The helmet shall be equipped with either a neck or chin strap which shall be fastened securely while the motorcycle or motor scooter is in motion and which shall be reflectorized so as to be visible from all distances between 600 and 100 feet.

(b) (a)(2) and (3) of this section do not apply to a person riding within an enclosed cab. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.285. HELMET REQUIRED WHEN MOTORCYCLE OR MOTOR SCOOTER RENTED. (a) A person may not on and after January 1, 1971, rent a motorcycle or motor scooter to another person unless he also has available for rent a helmet meeting the requirements of secs. 280(a)(3) and 300 of this chapter.

(b) A motorcycle or motor scooter may not be rented to a person who does not have in his possession, or rent, an approved helmet. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.290. MAXIMUM HEIGHT FOR HANDLEBARS. On and after January 1, 1971, a person may not operate a motorcycle or motor scooter on which the handlebars or grips, at their highest point, are more than 15 inches higher than the seat or saddle for the operator. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.295. MOTORCYCLE AND MOTOR SCOOTER WINDSHIELD. A motorcycle or motor scooter windshield, to be recognized as a windshield, shall rise 15 inches above the highest point of the handlebars or grips, and shall be of glazing material meeting the requirements of sec. 235(b) of this chapter or clear plastic which need not be an approved type. (Eff. 12/31/69, Reg. 31)

Authority: AS 28.05.030

13 AAC 04.300. HELMET, GOGGLES AND FACE SHIELD STANDARDS. (a) The protective headgear or helmet required to be worn by a person riding on or operating a motorcycle or motor scooter as provided by secs. 280 and 285 of this chapter shall be manufactured to meet the standards provided by U.S. Standards Institute Safety Code Z 90.1–1966.

Mark Greer S.R. Box 51504 C Fairbanks, AK 99701	Motorcycle handlebar laws--the law states 15" from lowest part of seat to highest part of handle bars. Should be from seat to shoulder length.
Rynnieva Wescott P.O. Box 169 Fairbanks, AK 99707	Eliminate loopholes allowing bureaucrats to interpret laws when making policy.
Walt Nielsen S.R. Box 80950 Fairbanks, AK 99701	Pay the state employees as per contract instead of procrastinating.
Jeanne Ostnes P.O. Box 81365 Fairbanks, AK 99708	Where are the paramedic and EMT regulations?
Ardena Norway 488-2538	Why not raise the unemployment? We live 65 miles up the Salcha River and have to come to town for unemployment check every two weeks. They will not mail it.
Martin H. Ott 332 N. Boundary Fairbanks, AK 99701	Refuse to endorse blackmail contracts with the federal government--it's time to start working for independence if we are to survive.
Leslye Korvola	Not a complaint, but a request for your ears, eyes, thoughts to discuss the feasibility of state funding for construction of an energy efficient building to house Div. 23 "Life on a Small Planet."
Pat Thurman 488-2031	Alcohol Education. Money was appropriated for alcohol education; however, the FNSB school district wasn't notified and therefore wasn't able to write a proposal for the money. There seems to be too many restrictions on the money and the state doesn't want to give the money to the school districts, but to an intermediary. School starts on 9/1 and bids weren't open until 8/21--impossible to start program now.

Alvin E. Miller
1507 Evergreen Street
Fairbanks, AK 99701

Not enough funds for proper control of state health-sanitation inspections for the pipeline. The old camps should be revised to meet state codes in the kitchen and refrigeration.

Mark L. Tishman
P.O. Box 81809
Fairbanks, AK 99708

Law should be changed to allow future morticians to serve a one year apprenticeship before going to mortuary college--not like it is now (the reverse).

Frances Huber
P.O. Box 2591
Fairbanks, AK 99707

The only way to get rid of the bureaucracy is to take the power of regulating away from the commissioners.

Keith Andue
S.R. Box 40567
Fairbanks, AK 99701

State fire marshall is investigating a new encumbrance on home building that should be stopped.

John W. Regitano
S.R. Box 10351
Rosie Creek Road
Fairbanks, AK 99701

What the hell happened to the capital move the people voted for?

Frank Gold
3098 Airport Way
Fairbanks, AK 99701

State law/regulations allow Division of Community and Rural Development to reject low bid for day care assistance administration.

Mrs. Robert H. Gamble
P.O. Box 1104
Fairbanks, AK 99707

State taking fee simple title of property by eminent domain or otherwise (Wells vs. State of Alaska).

R. Hymes
P.O. Box 60392
Fairbanks, AK 99701

People voting for: 1) Homestead Act; 2) Capital move; etc. only to have the court say no, no, no.

October 1979

Lester Hines
101 Charles Street
Fairbanks, AK 99701

Mr. Hines stopped by the office to complain about the regulations affecting senior citizens in the Golden Towers. He stated that too many people were abusing the regulations--they actually had more money coming in each month and were taking up space that could be used by people who really needed a place to live. According to the present regulations, an investigation is done to make sure that the person qualifies for low income housing; however, once admitted, they are not investigated again for two years. Mr. Hines feels that an investigation should be conducted once a year.

The regulations involved are 3 AAC 98.100 -- Periodic Reexamination and 3 AAC 98.140 -- Income Limits.

Lani

Area of residence Juneau Alaska

Government Office/Position
Director of Planning
City & Borough of Juneau

Do you know of state regulations causing stress or hardship? Please explain.

12 unit maximum for condo's relative to State mortgage assistance. Just isn't workable in Alaska's smaller urban areas — Dept. of Commerce & Econ. Dev. Regulations

If you would like to hear back from us about the problem, please print your name and address here.

ARTHUR H. HARTENBERGER
155 S. SEWARD ST.
JUNEAU, ALASKA 99801

Thanks For Helping!

AAC Page 3-182.3
3 AAC 92.030 (a)(3)

September 5, 1979

Alaska State Legislature
Administrative Regulation Review Committee
Senator Don Bennett, Chairman
Nerland Building, Suite 219
545 Third Avenue
Fairbanks, Alaska 99701

Dear Senator Bennett:

I have been an Alaska resident for over 32 years. There is one Law or regulation that has upset my over all plans for my continued residence in Alaska. I plan on retiring from my present position in about two years. If at all possible, I intend to remain in Alaska. I cannot imagine living any other place. In order to continue living in Alaska I will of course need some additional income. The law that upsets my plans for supplementing my retirement income is the Limited Entry law.

Since coming to Alaska in 1947, I have always had it in my mind to do a little trolling or gill netting after I retired. The reason I did not get into fishing as an occupation then was that I felt that I needed to have a more reliable income to raise my family on. I have raised six children, the last of which graduated and left home last year. Now I am facing my retirement years and I find that I will need to spend in excess of $10,000.00 for a permit if I wish to get into Salmon fishing. I cannot afford that amount and buy a boat too.

I would like to see legislation that would allow the issuance of Salmon fishing permits to long time Alaska residents. This should be a one person non re-salable permit. It could be awarded to persons who have lived in Alaska for 20, 25 or 30 years, retired and are over 50 years of age and continue to make Alaska their principal place of residence.

Legislation of this type would not cost the State one cent but would help some long time Alaskans. The few who would take advantage of it would not create any hardship to the Salmon industry.

I personally do not believe that any resident Alaskan should be denied the right to fish commercially in Alaskan waters.

I would really appreciate it if you would advise me if this proposal is feasible or not.

Sincerely,

David W. Oehler

David W. Oehler
Box 928
Valdez, Alaska 99686

HAND TROLLING

Alaska State Legislature

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE
Don Bennett, Chairman
M. "Ed" Dankworth
George Hohman

HOUSE OF REPRESENTATIVES
Oral E. Freeman, Vice-Chairman
M.F. "Mike" Beirne
Charlie Parr

FEBRUARY 28, 1980

Attached is some information that will be useful when the Administrative Regulation Review Committee meets Tuesday, March 4, 7:00 p.m. in the Butrovich Room for a public hearing on handtrolling regulations.

Carla

THE FOLLOWING:

(1) the handtroll petition that will be considered by the Board of Fish in March is item #VI-1 on page 7 under notice of proposed changes...etc.

(2) the largest group of papers contain the Southeastern Alaska and Yakutat area salmon troll regulations adopted by the Board of Fish during Dec. 78 and Jan. 80. Expect they will be approved by the Department of Law for filing by March 1.

(3) The smaller group of papers, about 4 pages, are regulations on the salmon troll fishery that were adopted by the Department of Fish and Game under delegation from the board. They were delivered to the Department of Law yesterday, so probably will not be approved for filing until mid to late March.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE ALASKA BOARD OF FISHERIES

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Alaska Board of Fisheries, under authority vested by Alaska Statutes 16.05.251, 16.05.475, 16.05.690, 16.05.940, 16.10.380, 16.10.440, and 16.20.260 proposes to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret and make specific the provisions of Title 16, Alaska Statutes.

Regulations to be the subject of Board action concern subsistence fishing, commercial fishing, sport fishing, and habitat protection.

The Board of Fisheries may adopt, amend, repeal or take no action on the proposed regulatory changes listed in the following informative summary:

SECTION I. SOUTHEASTERN-YAKUTAT AREA.

A. In the Subsistence Shellfish Fishery:

1. Change the boundary for the area in which the king crab season and size limit applies, so that the area will include all inside waters north of the latitude of Cape Spencer.

2. Increase the king crab season.

3. Establish separate legal size limits for abalone taken with or without diving gear.

B. In the Commercial Shrimp Fishery:

1. Reduce the season for taking shrimp with pots in districts 3, 4, and 5, reduce the shrimp pot limit in districts 3 and 4 and establish a pot limit in district 5.

2. Establish a guideline harvest level for shrimp taken in Cholmondely Sound.

3. Prohibit the use of trawls for taking shrimp in Lituya Bay.

C. In the Commercial Dungeness Crab Fishery:

1. Increase or reduce the dungeness crab fishing season and provide separate dungeness crab fishing seasons for the Southeastern and Yakutat portions of the area.

2. Increase the area closed to dungeness crab fishing in district 11.

D. In the Commercial King Crab Fishery:

1. Change the opening and closing dates for the king crab fishing season.

2. Require that a permit be obtained from the commissioner prior to taking brown king crab during a specific season and provide provisions that can be required by the permit. Such provisions may include, but not be limited to, harvest area and reporting requirements.

3. Provide a guideline harvest level for king crab in the Yakutat districts.

4. Allow the use of ring nets for taking king crab, reduce the king crab pot limit in districts 3, 4 and 5 and require that king crab pots be removed from the water during specified time periods.

5. Increase the area closed to king crab fishing in district 11.

E. In the Commercial Tanner Crab Fishery:

1. Require that all tanner crab pots be removed from the water during the closed tanner crab fishing season.

2. Change the opening and closing dates of the tanner crab fishing season.

3. Reduce the legal size limit for tanner crab.

4. Provide a tanner crab pot limit for the Yakutat districts.

F. In the Commercial Abalone Fishery:

1. Prohibit the commercial harvest of abalone.

2. Establish a season for taking abalone and provide guideline harvest levels.

3. Limit the amount of gear that may be fished from an abalone fishing vessel.

4. Prohibit shipment out of the state of live unprocessed abalone, require that persons shipping abalone out of the state contact the department and have the abalone inspected prior to shipment, prohibit the shucking of abalone until they have been inspected by the department and adopt other regulations to prevent the harvest of undersized abalone and insure that harvest reporting requirements are complied with.

G. In all Commercial Shellfish Fisheries:

1. Prohibit the taking of crab and abalone in areas adjacent to any community.

H. In the Commercial Salmon Fishery:

1. Change the salmon fishing season opening date in section 1-B.

SECTION II. PRINCE WILLIAM SOUND AREA.

A. In the Subsistence Shellfish Fishery:

1. Establish a daily bag and possession limit and legal size limit for dungeness crab and prohibit the taking of female dungeness crab.

B. In the Commercial Shrimp Fishery:

1. List Kodiak as an inspection and reinspection point for shrimp fishing vessels.

C. In the Commercial Tanner Crab Fishery:

1. Reduce the tanner crab fishing season.

D. In the Commercial Clam Fishery:

1. Allow the taking of gaper clams and change the opening and closing dates for the clam fishing season.

E. In the Commercial Trawl Fishery:

1. Allow the use of trawl gear in portions of Hinchinbrook Entrance now closed to the use of trawl gear.

SECTION III. COOK INLET AREAS.

A. In the Commercial Shrimp Fishery:

1. Change the registration deadline for shrimp trawl vessels and require operators of shrimp trawl vessels to report their catch to the department prior to landing.

2. Establish seasons and weekly fishing periods and change the guideline harvest levels for taking shrimp with pots.

3. Change the seasons, weekly fishing periods and guideline harvest levels for taking shrimp with trawls.

4. Define a selective shrimp trawl and establish a season for its use in taking shrimp.

B. In the Commercial Dungeness Crab Fishery:

1. Change the dungeness crab fishing season in the Southern district.

C. In the Commercial Clam Fishery:

1. Increase the Polly Creek certified clam harvesting area.

D. In the Subsistence Finfish Fishery:

1. Provide a season, weekly periods, open and closed areas, bag and possession limits, permit requirements, gear and operation requirements, and other necessary regulations to allow the taking of king salmon for subsistence purposes in the Northern district.

SECTION III. WESTWARD (KODIAK, CHIGNIK, ALASKA PENINSULA, DUTCH HARBOR, ADAK AND BERING SEA) AREAS.

A. In the Subsistence Shellfish Fishery:

1. Establish a subsistence king and tanner crab pot limit in the Kodiak area.

B. In the Commercial Shrimp Fishery:

1. Change the shrimp fishing seasons for the South Peninsula district and the Unalaska Bay section.

2. Reduce the guideline harvest level for shrimp in the South Peninsula district.

3. Repeal the shrimp trawl gear restrictions for the Inner Marmot Bay and Kalsin Bay sections.

C. In the Commercial King Crab Fishery:

1. Change the Adak and Bering Sea king crab areas to exclusive registration areas, prohibit vessels registered for the Kodiak king crab area from fishing any other king crab area, repeal the registration deadline for the Kodiak king crab area and change the registration deadline for the Cook Inlet king crab area.

2. Change the king crab vessel tank inspection requirements for the Kodiak king crab area.

3. Establish sections for the districts of the Kodiak king crab area.

4. Change the opening and closing dates for the king crab fishing season in all the Westward king crab areas.

5. Change the legal size limit for king crab for the Kodiak and Bering Sea areas.

6. Change the king crab guideline harvest levels for all the Westward king crab areas.

7. Provide that the department may allow district transfer of king crab vessels in the Dutch Harbor and Bering Sea king crab areas after determining there will be no enforcement problem.

8. Change the requirements for removal of king crab pots from closed waters for all the Westward king crab areas.

9. Change the king crab pot limit for the Kodiak king crab area.

D. In the Commercial Tanner Crab Fishery:

1. Establish portions of the Westward tanner crab area as exclusive registration areas.

2. Establish sections in the Kodiak tanner crab district.

3. Change the opening and closing dates for the tanner crab fishing seasons in all the districts of the Westward tanner crab area.

4. Establish tanner crab pot limits for the Kodiak and South Peninsula districts.

5. Change the requirements for removal of tanner crab pots from closed waters for all districts of the Westward tanner crab area.

6. Establish tanner crab vessel tank inspection requirements for all districts of the Westward tanner crab area.

7. Establish a tanner crab vessel district registration system for the Westward tanner crab area, including provisions for the number of districts a vessel may register for, changing district registration, movement of gear and crab between districts, validation of registration and suspension or exemption of registration requirements.

E. In the Commercial Miscellaneous Shellfish Fishery:

1. Establish a season and area for the taking of Korean hair crab in the Westward miscellaneous shellfish area.

2. Clarify in what portion of the Westward miscellaneous shellfish area scallops may be taken during the period June 1 through March 31.

SECTION IV. BRISTOL BAY AND ALASKA PENINSULA AREAS.

A. In the Commercial Salmon Fishery:

1. Adopt a Bristol Bay Sockeye Salmon Management Plan. The plan may include, but is not limited to, changes to seasons, weekly fishing periods, gear, gear operation and specification requirements, vessel specifications, operation and registration requirements, closed waters, and other provisions that will maximize the harvest of Bristol Bay sockeye salmon.

SECTION V. STATEWIDE.

A. In the Subsistence Shellfish Fishery:

1. Allow the use of biodegradable pot lid tiedowns on subsistence shrimp pots as an alternative escape mechanism.

2. Provide a daily bag limit for subsistence taken king crab.

3. Allow the use of jigging gear in salt water at all times of the year for the subsistence taking of shellfish.

4. Allow a commercially licensed fishing vessel not registered for miscellaneous shellfish to have aboard subsistence taken miscellaneous shellfish and gear for taking miscellaneous shellfish.

B. In the Commercial Shrimp Fishery:

1. Establish requirements for the use of a vessel to tender a shrimp fishing vessel.

C. In the Commercial Dungeness Crab Fishery:

1. Allow the use of a single escape ring in dungeness crab pots.

D. In the Commercial King Crab Fishery:

1. Repeal the inspection requirements for king crab vessels landing their catch in an area other than the one for which they are registered.

2. Allow storage of king crab pots in waters closed to king crab fishing for a specified time before the opening of those waters to the taking of king crab.

3. Define a king crab pot.

4. Require the reporting of king crab harvested, but lost, dumped overboard or not sold.

E. In the Commercial Tanner Crab Fishery:

1. Change the tanner crab vessel registration deadline for exclusive registration areas.

2. Allow the use of tanner crab pots on long lines.

3. Define a tanner crab pot.

F. In the General Provisions:

1. Require that operators of floating fish processing vessels report to a local representative of the department located within the area of intended operation prior to commencement of processing operations.

2. Prohibit the use of biodegradable pot lid tie downs on commercial dungeness crab pots and allow their use on commercial shrimp pots as an alternative escape mechanism.

3. Adopt the 1980 halibut fishing regulations of the International Pacific Halibut Commission.

4. Provide that the regulations of the U.S. Secretary of Commerce governing the taking of groundfish in the Gulf of Alaska also apply in state waters.

5. Define "waters of Alaska" and "escapement goals or needs."

G. In the Protection of Critical Fish Habitat Areas.

1. Provide that the commissioner or his authorized designee may require individuals and governmental agencies to submit full plans and obtain a permit for proposed land or water use or construction within waters or lands comprising fish critical habitat areas. Establish permit conditions necessary for the protection and maintenance of fish populations or habitat, provide for permit restrictions or revocation, monitoring of activities by the department, delegation of the commissioner's authority, mitigation procedures for rehabilitating damaged habitat, reporting requirements, and define terms necessary to implement these requirements.

SECTION VI. PETITIONS.

The Board of Fisheries will consider the following petitions submitted in accordance with Alaska Statute 44.62.220 which request the board to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code:

1. Prohibit or allow sport fishing from commercial fishing vessels licensed under AS 16.05.490 that are used to carry passengers for hire for the recreational or subsistence taking of fish and are also used to take salmon for commercial purposes with troll gear.

2. Establish the Kodiak and Chignik commercial herring fishing areas as exclusive registration areas, prohibit herring fishing vessels and gear that are registered for the Kodiak and Chignik areas from fishing for herring in any other herring fishing area, prohibit herring vessels and gear that are registered for another herring fishing area from fishing for herring in the Kodiak and Chignik areas and establish a deadline for registering herring vessels and gear for the Kodiak and Chignik areas.

Copies of proposed changes in regulations summarized in this notice may be inspected at any Department of Fish and Game office or may be obtained upon request by writing to the Board of Fisheries, Subport Building, Juneau, Alaska 99801.

Notice is also given that any persons interested may present oral or written statements or arguments relevant to the action proposed in this notice. Written comments should be mailed so as to be received by the Board of Fisheries, Subport Building, Juneau, Alaska 99801, before 4:30 p.m. on March 14, 1980. Written comments may also be submitted to the Board of Fisheries at any time prior to the close of a public hearing to be held at the Anchorage-Westward Hilton Hotel, Anchorage, Alaska. Oral testimony may be given at the public hearing which will commence at 10:00 p.m. March 25, 1980, and continue until all persons have been given the opportunity to be heard. Additional public hearings may be held throughout the meeting just prior to the consideration and adoption of proposed changes in the regulations of the various regulatory areas. An agenda will be posted daily during the meeting.

All persons interested in or affected by commercial, sport and subsistence fishing and habitat protection regulations are hereby informed that, by publishing this legal notice, the Board of Fisheries may consider all of the subjects covered by the proposed changes contained in this notice; the Board is not limited by the specific language or confines of the actual regulatory proposals submitted by the public or the staff. Unless otherwise specified, references to such topics as areas, seasons, species, gear and guideline harvest levels apply to all or portions of the specific topic. On its own motion, after public hearing, the Board may adopt, amend, reject, supplement, or take no action on these matters. The Board may adopt regulations that fall within the range of existing regulations and the proposals summarized in this legal notice. In addition, the Board may adopt other regulations necessary to implement, administer, or enforce the regulations adopted by the Boards. All persons interested in or affected by the subject matter contained in this legal notice should make written or oral comments if they wish to have their views considered by the Board.

DATE: 15 Feb 80

Ronald O. Skoog

Ronald O. Skoog, Secretary
Alaska Board of Fisheries

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.100 is amended to read:

5 AAC 30.100. DESCRIPTION OF AREA. The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 30.200(a) and (b) are amended to read:

5 AAC 30.200. FISHING DISTRICTS. (a) Yakataga district: all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and the longitude of Icy Cape (141°42' W. long.).

(b) Yakutat district: all waters of Alaska between the longitude of Icy Cape (141°42' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 30.331(a)(1)(C) and (F), (a)(2)(A) and (b) are amended to read:

5 AAC 30.331. GILL NET SPECIFICATIONS AND OPERATION. (a) Set gill nets with mesh size smaller than eight inches may not be deepr than 45 meshes and set gill nets with mesh size eight inches or larger may not be deeper than 35 meshes. The individual and aggregate lengths of any and all set gill nets aboard a vessel or in use by a person may not be more than one of the following hung measure:

(1) in the Yakutat district

(C) Yahtze River, Yana River and Malaspina Lake drainage, one net not to exceed 25 fathoms;

(F) East River, one net not to exceed 20 fathoms, except that after the third Monday in August two nets not to exceed 20 fathoms each and an aggregate length not to exceed 40 fathoms;

(2) in the Yakataga district

(A) Tsiu River; one net not to exceed 15 fathoms;

(b) Set gill nets may not obstruct more than two thirds of any salmon migratory waterway; except in the Tsiu River where set gill nets may not obstruct more than one half of the waterway. In the intertidal zone this applies at all stages of the tide.

Authority: AS 16.05.251(a)(4),(5)

5 AAC 30.335 is amended to read:

5 AAC 30.335. MINIMUM DISTANCE BETWEEN UNITS OF GEAR. No part of a set gill net may be set or operated within 100 yards of any part of another set gill net, except that in the Tsiu River, no part of a set gill net may be set or operated within 75 yards of any part of another set gill net.

Authority: AS 16.05.251(a)(4)

5 AAC 30.340 is added to read:

5 AAC 30.340. GILL NET OPERATION IN SURFLINE AREAS. The provisions of secs. 310, 320, 331 and 335 of this chapter as applied to each river fishery also apply to the area within a radius of one-half mile from the terminus of that river.

Authority: AS 16.05.251(a)(2)

5 AAC 30.350(a) is amended to read:

5 AAC 30.350. CLOSED WATERS. (a) Salmon may not be taken in the following waters:

(1) Alsek River: upstream starting at three miles below the southern end of "basin";

(2) Situk River: upstream from the Department of Fish and Game regulatory marker one-half mile west of the tip of Strawberry Point to the cut bank on the eastern side of the mouth of Johnson Slough;

(3) Ankau Inlet: inside of a line from 59°32'51" N. lat., 139° 49'42" W. long., to 59°32'47" W. lat., 139°49'42" W. long.

(4) Italio River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles from the terminus of the river;

(5) East River: upstream from the Department of Fish and Game regulatory markers located four miles upstream from the terminus of the river;

(6) Akwe River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles upstream from the terminus of the river;

(7) Lost River: upstream from Department of Fish and Game regulatory markers located 500 yards upstream from the most downstream tree line on the west bank at the terminus of the river;

(8) Old Village Lagoon: upstream from the road.

Authority: AS 16.05.060
AS 16.05.251(a)(2)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.200(f)(1)(2) and (3),(m),(n) and (o) are amended and (f)(4) is added to read:

5 AAC 33.200. FISHING DISTRICTS AND SECTIONS.

(f) unchanged

(1) section 6-A: waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barne to the tip of Point Baker;

(2) section 6-B: waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock light to Key Reef light to Nesbitt Reef light to the tip of Point Nesbitt;

(3) section 6-C: waters enclosed by a line from Lincoln Rock light to the westernmost point of Screen Islands to the westernmost point of March Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef light to Key Reef light to Lincoln Rock light;

(4) section 6-D: all other waters of the district.

(m) District 13: all waters north of a line projecting southwest from the southernmost tip of Cape Ommany, south of a line projecting west from the southernmost tip of Cape Spencer, west of a line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point and west of a line from the southernmost tip of Point Hayes to the northernmost point of Point Thatcher.

(n) District 14: all waters of Icy Strait west of a line from the southernmost tip of Point Couverden to Point Augusta light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northern most point of Soapstone Point to the westernmost point of Column Point.

(p) District 16: all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 33.310(b)(1)(A)(iv), (b)(2) and (c)(5)(B) are amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) unchanged:

(1) unchanged:

(A) unchanged:

(iv) district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia;

(2) during the period April 16 through September 20, salmon may be taken by power troll gear in that portion of district 12 north of the latitude of the northernmost tip of Point Hepburn, district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia, section 15-A and 15-C only during the fishing periods set forth in (b)(1) (B) of this section;

(c) unchanged:

(5) district 15

(B) section 15-C opens by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.350(b)(3)(8)(14)(15)(16)(17)(18)(20)(22)(28), (c)(1)(2)(B), (d)(1)(3)(5)(7)(9)(10)(21)(25)(26)(28)(29), (f)(2)(C), (f)(3)(A)(C), (f)(7)(8)(9)(10), (g)(1)(4)(8)(9)(11)(13)(15)(16), (h)(1)(2)(3)(4)(6)(7)(8)(11), (i)(1), (j)(1)(C), (j)(7)(9)(10)(14)(15), (k)(3)(7), (l)(1)(2)(3)(4)(5), (l)(6)(B)(C), (m)(1)(4)(5)(7)(8)(9)(11)(13)(14)(15), (n)(1)(2)(3)(4)(5)(7)(8)(9)(10)(13)(14)(15)(16)(17)(18)(19)(20)(21)(22)(23)(24)(25)(26), (o)(2)(3)(7)(9) and (p)(3)(4) are amended to read:

5 AAC 33.350. CLOSED WATERS.

(b) District 1

(3) Hidden Inlet: north of the latitude of the tip of Hidden Point;

(8) Very Inlet: inside of a line from 54°57'44" N. lat., 130°57'36" W. long. to 54°57'44" N. lat., 130°57'00" W. long.;

(14) Traitors Cove: east of 131°41'48" W. long.;

(15) Naha Bay: east of 131°38'18" W. long;

(16) Moser Bay: south of a line from the tip of Cod Point to 55°34'00" N. lat., 131°40'54" W. long.;

(17) Port Stewart: west of a line from 55°43'06" N. lat., 131°49'17" W. long. to 55°41'33" N. lat., 131°50'05" W. long.;

(18) Helm Bay: west of a line from the tip of Helm Point to 55°34'54" N. lat., 131°56'57" W. long.;

(20) Vallendar Bay: south of a line from 55°23'45" N. lat., 131° 50'52" W. long. to 55°22'55" N. lat., 131°52'58" W. long.;

(22) Ward Cove: east of a line from 55°23"56" N. lat., 131°44' 27" W. long. to 55°23'38" N. lat., 131°44'01" W. long.;

(28) Ray Anchorage: all waters inside a line between 54°56'39" N. lat., 131°13'54" W. long. and 54°55'42" N. lat., 131°12'54" W. long.;

(c) District 2

(1) Nichols Bay: north of 54°42'07" N. lat.;

(2) Moira Sound

(B) Johnson Cove: south of 54°59'43" N. lat.;

(d) District 3

(1) Hunter Bay: east of a line from the tip of Turn Point to 54°52'48" N. lat., 132°21'20" W. long.;

(3) Keete Inlet: east of the longitude of the tip of Keete Point;

(5) Hetta Harbor: east of the longitude of the tip of Hetta Point;

(7) Eek Inlet: west of a line from 55°08'48" N. lat., 132°39' 25" W. long. to 55°08'53" N. lat., 132°39'23" W. long.;

(9) Ham Cove: south of 54°53'00" N. lat.;

(10) Kasook Inlet: north of 55°01'40" N. lat.

(21) Salt Lake Bay: east of 133°23'22" W. long.

(25) Edna Bay: north of a line from Limestone Point light to 55°55'55" N. lat., 133°37'40" W. long.;

(26) Tokeen Bay: east of a line from the tip of Holbrook Point to 55°59'52" N. lat., 133°27'51" W. long.;

(28) Devilfish Bay: west of 133°20' W. long.;

(29) Hessa Inlet: east of the longitude of the tip of Whirlpool Point;

(f) District 5

(2) Port Beauclerc

(C) The cove 0.7 miles west of the northern tip of Edwards Island between 56°18'20" N. lat., 133°58'30" W. long., and 56°19'15" N. lat., 133°58'20" W. long.;

(3) Affleck Canal

(A) Bear Harbor: north of a line from 56°13'25" N. lat., 134°05'45" W. long., to 56°13'50" N. lat., 134°05'05" W. long.;

(C) north of 56°16'20" W. long.;

(7) Hole in the Wall, northwest coast of Prince of Wales Island: east of 133°38'30" W. long.;

(8) Alvin Bay: west of 133°53'25" W. long.;

(9) Reid Bay: west of 133°53'55" W. long.;

(10) Barrie (Kushehin) Creek: east of a line from 56°27'50" N. lat., 133°40'05" W. long., to Trouble Island at 56°28'45" W. lat., 133°40'45" W. long. to 56°28'00" N. lat., 133°39'55" W. long.;

(g) District 6

(1) Salmon Bay: within a line extending from 56°17'24" N. lat., 133°08'14" W. long., to Rookery Island to 56°19'06" N. lat., 133°09'42" W. long.;

(4) Ratz Harbor: south and west of a line from 55°53'08" N. lat., 132°35'37" W. long., to 55°53'16" N. lat., 132°35'47" W. long.;

(8) Rocky Bay, west coast of Etolin Island: north of a line from 56°04'20" N. lat., 132°36'30" W. long., to 56°04'24" N. lat., 132°36'03" W. long.;

(9) Mosman Inlet: north of 56°05'20" N. lat.;

(11) Exchange Cove: south of a line from 56°13'07" N. lat., 133°03'42" W. long., to 56°12'54" N. lat., 133°03'25" W. long;

(13) Kah Sheets Bay: west of a line from 56°31'28" N. lat., 133°05'12" W. long., to 56°29'46" N. lat., 133°07'12" W. long.;

(15) Wrangell Narrows: all waters north of the tip of Point Alexander except by trolling;

(A) Blind Slough: east of a line from the tip of Anchor Point to Coast Guard light #25 to Coast Guard light #27 to a point 200 yards due north of the tip of Blind Point;

(B) Petersburg Creek: west of a line from 56°48'15" N. lat., 132°59'33" W. long., to Coast Guard light #56 to Coast Guard light #58 to the tip of Bayou Point;

(16) Navy Creek: east of a line from 56°03'30" N. lat., 132°27'54" W. long., to the southwest tip of South Burnett Island and east of a line from the northern tip of South Burnett Island to the southern tip of North Burnett Island and east of a line from the northern tip of North Burnett Island to 56°04'36" N. lat., 132°27'29" W. long.

(h) District 7

(1) Anita Bay: west of a line from the tip of Anita Point to 56° 15'18" N. lat., 132°22'56" W. long., except by trolling;

(2) Olive Cove: south of a line from 56°11'33" N. lat., 132°19' 06" W. long. to 56°11'24" N. lat., 132°18'43" W. long.;

(3) Thom's Place, Zimovia Strait: north of 56°09'38" N. lat.;

(4) Fool's Inlet: north of 56°12'30" N. lat.;

(6) Blake Channel and eastern Passage: north of 56°12'00" N. lat., and east of a line from the tip of Babbler Point to 56°27'48" N. lat., 132° 16'38" W. long., on Hour Point except by trolling which is closed from April 16 through September 30;

(7) Vixen Inlet: east of the longitude of the westernmost tip of Sunshine Island;

(8) Santa Anna Inlet: south of the latitude of the tip of Point Santa Anna;

(11) Union Bay: south of a line from 55°44'48" N. lat., 132°14' 07" W. long. to 55°45'34" N. lat., 132°11'08" W. long.;

(i) District 8

(1) Blind Slough: north of a line from 56°30'45" N. lat., 132°43' 18" W. long., to 56°31'55" N. lat., 132°40'32" W. long.;

(j) District 9

(1) Tebenkof Bay

(C) Thetis Bay: south of 56°23'22" N. lat.;

(7) Port Walter and Little Port Walter: west of a line from 56°23'15" N. lat., 134°38'05" W. long. to 56°23'42" N. lat., 134°38'15" W. long.;

(9) Eliza Harbor: north of 57°14'18" N. lat.;

(10) Kadake Bay: south of a line from 56°48'45" N. lat., 133°58' 00" W. long. to 56°48'23" N. lat., 133°56'28" W. long.;

(14) Deep Cove: west of 134°43'38" W. long.;

(15) Patterson Bay: north of 56°36'44" N. lat.

(k) District 10

(3) Farragut Bay: Francis Anchorage north of 57°08'45" N. lat.;

(7) Dry Bay: inside of a line from 57°03'32" N. lat., 133°01'55" W. long., to 57°02'49" N. lat., 133°01'45" W. long., to 57°02'57" N. lat., 133°00'10" W. long.

(l) District 11

(1) Auke Bay: inside a line from the tip of Point Louisa to the tip of Outer Point;

(2) Taku Inlet: north of a line from the Annex Creek Power House to a point at 58°17'30" N. lat., 134°01'00" W. long.;

(3) Slocum Inlet: all waters east of a line from 58°08'21" N. lat., 134°04'14" W. long., to 58°07'49" N. lat., 134°04'24" W. long.;

(4) Taku Harbor: all waters east of a line from the tip of Stokade Point to 58°03'41" N. lat., 134°01'59" W. long.;

(5) Limestone Inlet: all waters east of a line from 58°01'48" N. lat., 133°59'16" W. long., to 58°02'04" N. lat., 133°59'40" W. long.

(6) Seymour Canal

(B) Mole Harbor: inside a line from the tip of Flaw Point to a point at 57°39'40" N. lat., 134°01'30" W. long.;

(C) Pleasant Bay: all waters inside a line from 57°38'50" N. lat., 133°59'42" W. long. to a point at 57°38'28" N. lat., 133° 57'25" W. long.;

(m) District 12

(1) Wilson Cove: all waters east of the longitude of Point Wilson;

(4) Hood Bay: all waters east of 134°24'30" W. long. except by trolling;

(5) Kootznahoo Inlet: all waters east of a line from the tip of Turn Point to Village Rock light except by trolling;

(7) Funter Bay: all waters inside the longitude of the tip of Clear Point, except by trolling;

(8) Howard Bay: all waters inside the latitude of the tip of Point Howard, except by trolling;

(9) Freshwater Bay: all waters inside a line from a point at 57°53'20" N. lat., 135°07 35" W. long., to 57°54'45" N. lat., 135°06'00" W. long.;

(11) Basket Bay: all waters inside a line from 57°39'50" N. lat., 134°53'12" W. long., to 57°39'17" N. lat., 134°53'53" W. long.;

(13) Warm Springs Bay: west of 134°46'38" W. long.;

(14) False Bay: west of a line from 57°58'33" N. lat., 134°55' 05" W. long., to 57°57'00" N. lat., 134°55'23" W. long.;

(15) Wukuklook Creek: west of a line from a point at 57°05'15" N. lat., 135°55'30" W. long., to Flinks Point at 57°52'30" N. lat., 135°57'20" W. long.;

(n) District 13

(1) Lisianski Inlet: south of a line from 57°56'46" N. lat., 136°14'10" W. long.; to 57°57'15" N. lat., 136°12'53" W. long. except by trolling;

(2) Salt Lake Lagoon, Takanis Bay: north and east of a line from 57°55'05" N. lat., 136°30'22" W. long., to 57°55'25" N. lat., 136°31'00" W. long.;

(3) Stag Bay: east of 136°21'25" W. long.;

(4) Goulding Harbor: north of a line from 57°46'18" N. lat., 136°15'05" W. long., to 57°46'22" N. lat., 136°15'27" W. long.;

(5) Black Bay: north and east of a line from 57°42'37" N. lat., 136°09'20" W. long., to 57°42'23" N. lat., 136°09'10" W. long.;

(7) Waterfall Cove, Slocum Arm: north and east of a line from 57° 37'18" N. lat., 135°56'10" W. long., to 57°30'53" N. lat., 135°55'00" W. long.;

(8) Fish Bay: east of 135°35'10" W. long.;

(9) Hoonah Sound: west and north of a line from 57°44'12" N. lat., 135°43'40" W. long., to 57°43'45" N. lat., 135°44'40" W. long.;

(10) Ushk Bay: west of 135°35'00" W. long.;

(13) Hanus Bay: south of a line from 57°25'29" N. lat., 134°59' 00" W. long., to 57°25'18" N. lat., 135°03'40" W. long.;

(14) Nakwasina Passage: north and east of a line from 57°14'12" N. lat., 135°29'55" W. long., to 57°14'53" N. lat., 135°30'28" W. long.;

(15) Nakwasina Sound: north and east of a line from 57°11'42" N. lat., 135°23'30" W. long., to 57°12'12" N. lat., 135°22'40" W. long.;

(16) Katlian Bay: north and east of a line from 57°09'30" N. lat., 135°22'35" W. long., to 57°09'07" N. lat., 135°21'55" W. long.

(17) Redoubt Bay: east of 135°18'53" W. long.;

(18) Port Banks: south and east of a line from 56°36'07" N. lat. 135°00'20" W. long., to 56°35'55" N. lat., 135°01'10" W. long.;

(19) Still Harbor: south and east of a line from 56°33'15" N. lat., 135°02'40" W. long., to 56°33'38" N. lat., 135°02'25" W. long.;

(20) Redfish Bay: north and west of a line from 56°20'41" N. lat., 134°51'31" W. long., to 56°20'49" N. lat., 134°51'05" W. long.;

(21) Big Branch Bay: north and east of a line from 56°19'27" N. lat., 134°50'30" W. long., to 56°19'18" N. lat., 134°50'08" W. long.;

(22) Sitkoh Bay: west of a line from 57°29'17" N. lat., 134°53'25" W. long., to 57°29'36" N. lat., 134°53'58" W. long.;

(23) Patterson Bay: west of a line from 57°40'23" N. lat., 135° 42'42" W. long., to 57°39'35" N. lat., 135°42'18" W. long.;

(24) Fick Cove: south and west of a line from 57°37'51" N. lat., 135°39'38" W. long., to 57°38'25" N. lat., 135°40'39" W. long.;

(25) Starrigavan Bay: all waters east of a line from 57°07'47" N. lat., 135°22'45" W. long., to the ferry terminal dock at 57°08'25" N. lat., 135°22'30" W. long.;

(26) Deep Bay: west of a line from 57°39'35" N. lat., 135°37'20" W. long., to 57°26'32" N. lat., 135°37'46" W. long.

(o) District 14

(2) Port Althorp: within a line from the tip of Point Lucan to a point at 57° 09'40" N. lat., 135°19'30" W. long., except by trolling;

(3) Idaho Inlet: south of the latitude of the tip of Gull Point, except by trolling;

(7) Whitestone Harbor: within a line from 58°04'15" N. lat., 135° 04'36" W. long., to 58°03'36" N. lat., 135°04'15" W. long., except by trolling;

(9) Excursion Inlet: north of a line from 58°22'36" N. lat., 135° 28'30" W. long., to 58°22'36" N. lat., 135°28'18" W. long., except by trolling;

(p) District 15

(3) Taiya Inlet: all waters north of the latitude of the tip of Taiya Point, except by trolling;

(4) St. James Bay: all waters north of a line from the tip of Point Whidby to St. James Point at 58°33'45" N. lat., 135°09'45" W. long., except by trolling.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.360 is added to read:

5 AAC 33.360. DISTRICT ONE AND SIX PINK SALMON MANAGEMENT PLAN. In districts 1 and 6, when a purse seine fishery is harvesting pink salmon stocks subject to concurrent fishing by drift gill nets; for each day or portion of a day the purse seine fishery is open, the corresponding gill net fishery shall be open a full 24 hours.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(4)

5 AAC 33.392 is amended to read:

5 AAC 33.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the mid-point of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this paragraph.

Authority: AS 16.05.251(a)(3),(4),(7)

5 AAC 33.393 is amended to read:

5 AAC 33.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho by troll gear.

Authority: AS 16.05.251(a)(3),(4),(7)

5 AAC 33.410(a)(1) and (2) are amended to read:

5 AAC 33.410. FISHING SEASONS. (a) Sablefish may be taken only as follows:

(1) in the northern area which includes district 9 north and east of a line from the southernmost tip of Cape Ommaney to the northernmost tip of Nation Point, district 10, 11, 12, section 13-C, districts 14 and 15, from September 1 through November 15 or until the area is closed by emergency order;

(2) in the southern area which includes districts 1, 2, 3, 5, 6, 7, and 8, from June 15 through November 15 or until the area is closed by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3)

5 AAC 33.415(a) and (b) are added to read:

5 AAC 33.415. GUIDELINE HARVEST LEVELS. (a) In the northern area as described in sec. 410(a)(1) of this chapter, the guideline harvest range for sable fish is 500,000 to 900,000 pounds (227 to 408 m.t.).

(b) in the southern area as described in sec. 410(a)(2) of this chapter, the guideline harvest range for sablefish is 125,000 to 500,000 pounds (57 to 227 m t.).

Authority: AS 16.05.251(a)(2),(3)

5 AAC 33.420(a),(b) and (c) are added to read:

5 AAC 33.420. REGISTRATION. (a) Operators of fishing vessels intending to fish for sablefish in the northern area as described in sec. 410(a)(1) of this chapter shall notify a local representative of the department by phone, radio or in person within 72 hours before starting fishing operations in the area.

(b) Within 24 hours after leaving the northern area, operators of sablefish fishing vessels shall notify a local representative of the department by phone, radio or in person.

(c) A vessel operator reporting as required by (a) and (b) of this section shall also report the amount of sablefish on board the vessel at the time of reporting.

Authority: AS 16.05.251(a)(2).(4),(7),(12)

Authority: AS 16.05.251(a)
AS 16.05.475
AS 16.05.905
AS 16.05.910
AS 16.05.920
AS 16.05.940

5 AAC 39.250(c) is amended and (d) is added to read:

5 AAC 39.250. GILL NET SPECIFICATIONS AND OPERATION.

(c) Gill net web may not contain no less than 30 filaments.

(d) The float line and floats of gill nets must be floating on the surface of the water while the net is fishing, unless natural conditions cause the net to temporarily sink. The restriction of this subsection does not apply in Kotzebue-Northern area (5 AAC 03.100), Norton Sound-Port Clarence area (5 AAC 04.100), Yukon area (5 AAC 05.100) and Kuskokwim area (5 AAC 07.100).

Authority: AS 16.05.251(a)(4)

5 AAC 39.270(c) and (d) are amended and (e) is added to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION.

(c) Each licensed power troll vessel must display its permanent vessel license plate number in permanent symbols of black on a white background. Each number must be at least twelve inches in height, with lines at least one inch in width and must be permanently affixed on both sides of the cabin or hull so as not to be obscured. The numbers must be displayed at all times until the end of the calendar year.

(d) Each licensed hand troll vessel must display the letters HT in permanent block letters. Each letter must be painted on both sides of the vessel hull or cabin in a color contrasting with the background, at least four inches in height, at least one-half inch in width, plainly visible and unobscured at all times. The letters must be displayed at all times until the end of the calendar year. No hand troll vessel may display its permanent vessel plate number (ADF&G number) in any location other than on the vessel license plate.

(e) No more than six troll gurdies may be mounted on board any salmon troll vessel. A troll gurdy is a spool type device around which a troll line can be wrapped.

Authority: AS 16.05.251(a)(4),(5),(7)

TITLE 5. FISH AND GAME.

PART I. COMMERCIAL AND SUBSISTENCE FISHING AND PRIVATE NONPROFIT SALMON HATCHERIES.

CHAPTER 21.
COOK INLET AREA.

5 AAC 21.430(a) is amended to read:

5 AAC 21.430. GEAR. (a) Bottomfish may be taken in all districts only by trawls, longlines and mechanical jigging machines.

Authority: AS 16.05.251(a)(4),(7), (12)

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.392 is amended to read:

5 AAC 30.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the midpoint of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this section.

Authority: AS 16.05.251(a)(3),(4), (7)

5 AAC 30.393 is amended to read:

5 AAC 30.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho salmon by troll gear.

Authority: AS 16.05.251(a)(3),(4), (7)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.310(b)(1)(B) is amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) Salmon may be taken by hand troll and power troll gear from January 1 through December 31 in all districts except as provided in sec. 350 of this chapter and except as follows:

(1) during the period April 16 through September 20 salmon may be taken by hand troll gear:

(B) April 16 through April 21
April 28 through May 5
May 12 through May 19
May 26 through June 2
June 9 through June 16
June 23 through June 30
July 7 through July 14
July 21 through July 28
August 4 through August 11
August 18 through August 25
September 1 through September 8
September 15 through September 20

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.365 is adopted to read:

5 AAC 33.365. SOUTHEASTERN ALASKA-YAKUTAT CHINOOK AND COHO SALMON TROLL FISHERIES MANAGEMENT PLAN. (a) The management of the Southeastern Alaska and Yakutat areas chinook and coho salmon troll fisheries is complex because of mixing of the salmon stocks and fishing effort placed upon those salmon stocks by the subsistence, commercial and recreational user groups. The Board of Fisheries is concerned that some user groups, particularly those who traditionally fish the inshore and terminal salmon fishing areas as described in sec. 312(a)(1),(2) and (3) of this chapter, may be receiving reduced opportunities to take chinook and coho salmon because of increasing fishing effort by the salmon power troll fleet on mixed stocks of those species of salmon in the coastal and offshore salmon fishing areas as described in sec. 312(a)(4) and (5) of this chapter. The board is also concerned that continued increases in fishing effort on mixed chinook and coho salmon stocks may result in overharvest of individual salmon stocks or aggregations of those stocks, such that spawning escapement of those stocks to their natal streams may fall below that required to maintain a sustained yield of those stocks. Because of the above concerns, the board has adopted regulations that control the time, area of operation and efficiency of the salmon power and hand troll fisheries.

(b) The board recognizes that changes in size and timing of the chinook and coho salmon runs and changes in the distribution of fishing effort by the hand and power troll fleet may require inseason adjustments to salmon fishing seasons, periods and areas to allow chinook and coho salmon to escape the coastal and offshore fisheries and move into the inshore and terminal fishing areas. The department shall make inseason adjustments to salmon fishing seasons, periods and areas as follows:

(1) there may be no changes made to the chinook salmon fishing seasons, periods and areas during the period January 1 through June 14;

(2) there may be no changes made to the coho salmon fishing seasons, periods and areas during the period June 15 through July 9;

(3) about July 10 the department will evaluate the size and distribution of the coho salmon run and will close the Southeastern and Yakutat areas salmon troll fishery for 10 days, unless the department determines that the coho salmon run is larger than the last 10 year average and that acceptable numbers of coho salmon are moving into the inshore salmon fishing areas;

(4) following any July closure made in accordance with (3) of this subsection, the Southeastern Alaska and Yakutat salmon fishing areas will reopen for salmon hand and power troll fishing as provided for in the salmon hand and power troll fishing regulations contained in chaps. 30, 33 and 39 of this title;

(5) additional closures of the salmon hand and power troll fishing seasons, periods and areas may be required if the department determines that the strength of the coho salmon run in the inshore and terminal salmon fishing areas is less than required to provide a spawning escapement that will maintain the runs on a sustained yield basis.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(11)

CHAPTER 39.
GENERAL PROVISIONS.

5 AAC 39.120(g) is added to read:

5 AAC 39.120. REGISTRATION OF COMMERCIAL FISHING VESSELS.

(g) Registration requirements for salmon troll fishing vessels are as follows:

(1) the owner or operator of any fishing vessel that is to be used to take salmon with hand or power troll gear shall register that vessel with the department;

(2) no fishing vessel may be registered as both a hand troll and a power troll vessel;

(3) registration is accomplished by completing a form provided by the department and returning that form to a department office;

(4) any vessel that is to be used as a salmon troll fishing vessel must be registered before April 15 of each calendar year;

(5) this subsection becomes effective January 1, 1981.

Authority: AS 16.05.251(a)(2),(4),(5),(12)
AS 16.05.490
AS 16.05.510

5 AAC 39.270(a) is amended to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION. (a) The maximum number of trolling lines that may be operated from any salmon troll vessel is as follows.

(1) from power troll vessels: no more than four lines, except that no more than six lines may be operated in that portion of the Seaward Biological Influence Zone north of the latitude of the southernmost tip of Cape Spencer;

(2) from hand troll vessels

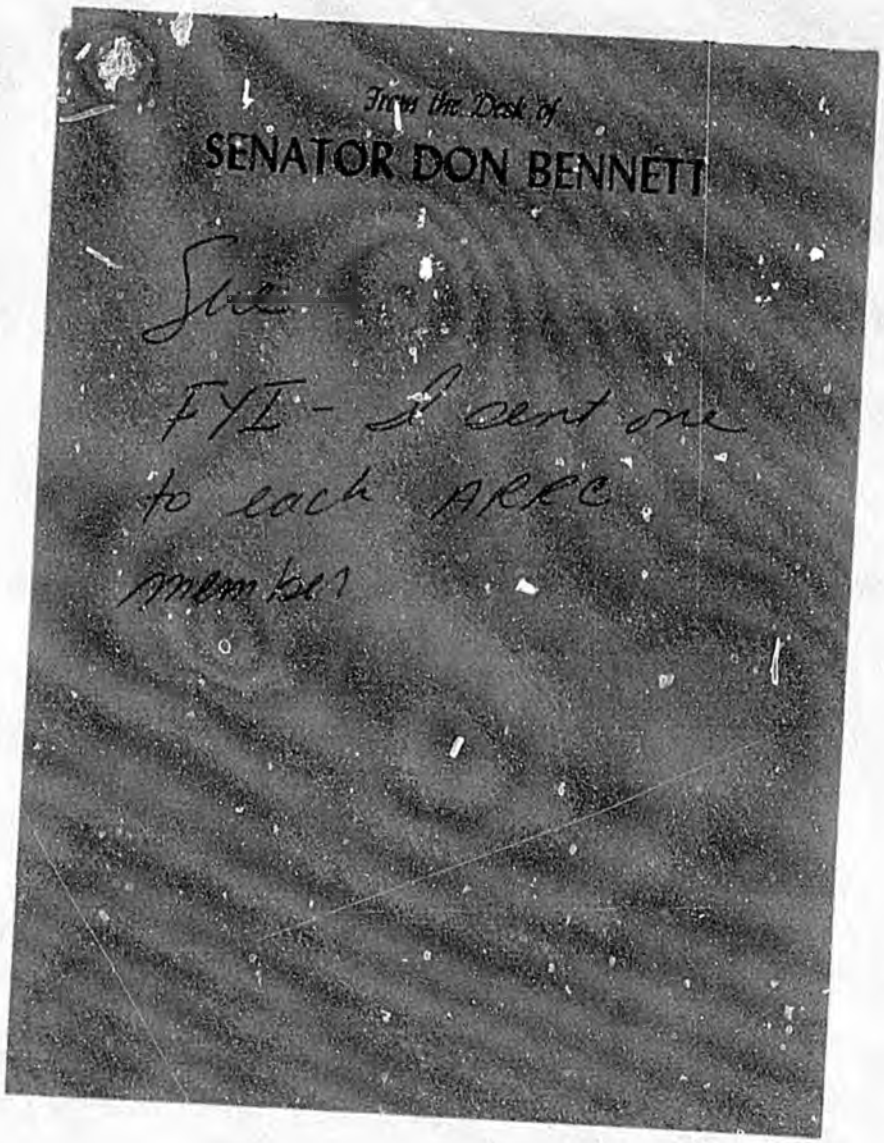
(A) using hand troll gurdies: no more than two lines to which multiple leaders and hooks may be attached;

(B) using fishing rods: no more than four lines with no more than one leader and one lure or two baited hooks per leader;

(3) hand troll vessels may not concurrently use hand troll gurdies and fishing rods;

(4) for the purposes of this subsection, a fishing rod is a tapering often jointed rod equipped with a hand grip and line guides and upon which is mounted a hand powered reel used to deploy and retrieve the trolling line and a hand troll gurdy is a troll gurdy powered by hand or hand crank that is not mounted on or used in conjunction with a fishing rod.

Authority: AS 16.05.251(a)(4),(5), (7)


From the Desk of
SENATOR DON BENNETT
Stu -
FYI - I sent one
to each AREC
member

February 25, 1980
(LETTER OF PETITION)
"PESIDENT 1977 HANDTROLLERS"

BY CERTIFIED MAIL TOO:
GOV. JAY HAMMOND
LIMITED ENTRY COMMISSION
DEPT. OF FISH AND GAME
STATE BOARD OF FISH AND GAME
KETCHIKAN BOARD OF FISH AND GAME

Sen. Don Bennett
ALASKA STATE LEGISLATURE
ALASKA SEINERS ASSN:
ALASKA POWERTROLLERS ASSN:
KETCHIKAN DAILY NEWS
CITEZINS OF ALASKA

Dear Alaskans:

Date Mailed: March 6, 1980

We hereby request immediate action from the State of Alaska, and other authorities controlling Handtrolling in districts 1 & 2 Southeast Alaska to immediately revoke the 8 days on and 6 days off regulation enforced on us last year, the closure to not apply to Handtroll permits who fished prior to "78 & 79". The State of Alaska fisherey authorities are negligent and discriminating to old Handtrollers who have traditionally fished the newly closed areas, and we feel that we are being unduly penalized, because the State did not have limitations on number of Handtroll permits in effect by "1977"(considered the breaking point) and kept selling thousands of permits, which has led to this deplorable situation. This must be enacted immediately and in effect for the 1980 season so we can financially stay in the fishing industry. Soaring inflation, high fuel prices etc. now restrict us more than ever to fish these areas that we have previsously fished, restrictions like this figure 50% off a normal fishing season. We cannot wait while the State burocarcy is floundering and we are being unduly penalized for their negligence. The State fishery authorities imposed the closures due to excess % of Handtroll fish caught by thousands of excess Handtroll permits sold by the State in "1978 & 1979". So an immediate moritorium must beheld from that date concering the closures and not restrict the estabilished Handtroll permit holders prior to "1978". We cannot survive another hardship closure such as was imposed on us last year. Untill the limited Entry Handtroll situation is equitably resolved and applied-remove the closures now! Which are strangling the Handtrollers who have fished and lived here for years.

We are looking foreward to your earliest attention, acknowledgment, action and answer to this ur ent situation.

Your reply is a ted.

Sincerely,
"Resident 1977 Handtrollers"
Letter of Petition
P.O. Box 5260
Ketchikan, Alaska 99901

Name & Address	H,T, Permit 1970-1977	H.T. Permit Number	STATERES. yes-no	RES. yrs.
[illegible] Ketch Box 941	Yes	26035	Yes	fished 6 yrs.
[illegible] Ketch.	Yes	21035	Yes	fished 12 yrs.
Robert Stanton PO Box 5260 Ketch ALASKA	yes	24342	yes	(fished) 25 yrs
Eva O. John P.O. Box 7563 Ketch Alaska	yes	S05B18422A 28420	yes	21 years
Bob Lee Box 991 WARD COVE ALASKA 99928	YES	34972	YES	9 YEARS
Irene R. Russell Rt. 1-Box 486 Kelleher Alaska	yes	20069	Yes	20 years
Thomas Fuller Box 1125 Ward Cove AK 99928	Yes	24328	Yes	fished 5yrs lived 20 yrs
Bernard Kurdoglo Box 3311 Ketch	yes	S05B17790C	yes	19½ years
Jarid W. Lein	Yes	S05B11043L	Yes	40 years
Lothar Christophe 3802 Ingraham Seattle	Yes		YES	43 yrs

February 25, 1980
(LETTER OF PETITION)
"RESIDENT 1977 HANDTROLLERS"

BY CERTIFIED MAIL TOO:
GOV. JAY HAMMOND
LIMITED ENTRY COMMISSION
DEPT. OF FISH AND GAME
STATE BOARD OF FISH AND GAME
KETCHIKAN BOARD OF FISH AND GAME

Sen. Don Bennett
ALASKA STATE LEGISLATURE
ALASKA SEINERS ASSN:
ALASKA POWERTROLLERS ASSN:
KETCHIKAN DAILY NEWS
CITEZINS OF ALASKA

Dear Alaskans:

DATE MAILED: MARCH 6, 1980

We hereby request immediate action from the State of Alaska, and other authorities controlling Handtrolling in districts 1 & 2 Southeast Alaska to immediately revoke the 8 days on and 6 days off regulation enforced on us last year, the closure to not apply to Handtroll permits who fished prior to "78 & 79". The State of Alaska fisherey authorities are negligent and discriminating to old Handtrollers who have traditionally fished the newly closed areas, and we feel that we are being unduly penalized, because the State did not have limitations on number of Handtroll permits in effect by "1977"(considered the breaking point) and kept selling thousands of permits, which has led to this deplorable situation. This must be enacted immediately and in effect for the 1980 season so we can financially stay in the fishing industry. Soaring inflation, high fuel prices etc. now restrict us more than ever to fish these areas that we have previsously fished, restrictions like this figure 50% off a normal fishing season. We cannot wait while the State burocarcy is floundering and we are being unduly penalized for their negligence. The State fishery authorities imposed the closures due to excess % of Handtroll fish caught by thousands of excess Handtroll permits sold by the State in "1978 & 1979". So an immediate moritorium must beheld from that date concering the closures and not restrict the estabilished Handtroll permit holders prior to "1978". We cannot survive another hardship closure such as was imposed on us last year. Untill the limited Entry Handtroll situation is equitably resolved and applied-remove the closures now! Which are strangling the Handtrollers who have fished and lived here for years.

We are looking foreward to your earliest attention, acknowledgment, action and answer to this urgent situation.

Your reply is awaited.

Sincerely,
"Resident 1977 Handtrollers"
Letter of Petition
P.O. Box 5260
Ketchikan, Alaska 99901

Name & Address	H.T. Permit 1970-1977	H.T. Permit Number	STATE RES. yes-no		RES. yrs.
William H. Dow, Sr KTN		26128	✓		40 yrs.
[illegible] Box 3924 KTN AK	74 [illegible]	26265	✓		19 yrs
[illegible] Rt 1 Box 680 KTN AK	1975	16958	✓		33 yrs
[illegible] Box 6551 KTN	1975-1978	24351	✓		21 years
[illegible] WARD Box 1183 Ketch	77 [illegible]	28347	✓		30 years
[illegible] SR Box 3121 KTN	yes	13753	✓		76 y.e.o
[illegible] Box 9635 KTN	YES	30 5 B 29 X 93 P	✓		19 Yrs
Joseph F. Stanker 1712 First Ave Ketch.	yes	33720	✓		27 years
James B. Stanker 1712 FIRST AVE KETCHIKAN	yes	33725	✓		25

(Letter of Petition #2)
(Resident 1977 Handtrollers)
(District #1)

By Certified Mail to:
Gov. Jay Hammond
Limited Entry Commission
Dept.,of Fish and Game
State Board of Fish and Game
Ketchikan Board of Fish and Game

4 PAGES
of 45
Signers

Terry Gardiner State Legislature
Robert Zeigler State Legislature
Oral Freeman State Legislature
Alaska Power Trollers
Ketchikan Daily News
Alaska Seiners Association

Mailed 3/19/80

Dear Alaskans:

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Sincerely,
"Resident 1977 handtrollers"
(District #1)
(Letter of Petition #2)
P.O. Box 5260
Ketchikan, Alaska 99901

Name & Address	H.T. Permit 1970-1977	H.T. Permit Number	STATE RES. yes-no	RES. yrs.
Robert Stanker P.O. Box 5260 Ketch. Alaska	yes	S 612480 24342	yes	25
Mabel W. Jones 3944 Dale St Ketchikan	yes	S05B110431 24001	yes	41
Keith E Hall Hollis Box 5311	yes	3989	yes	10
Bernard Kimball	yes	S05B17790C	yes	19½
Jack Hilton R.I. Box 941 Ketchikan Alaska	yes	24638	yes	62
Frank R. Hill R.I. Box 941 Ketchikan Alaska	yes	24634	yes	19
Irene R. Renahan RR 1 - Box 986 Ketchikan	yes	S05B14420656	yes	20
Thomas A Tinker Box 1128 Ward Cove	yes	SCSB30976C 24328	yes	5 yrs
Minnie Christopher Box 802 Ward Cove	yes	154660 Permit 24041	yes	50 yrs
Robert Lee Box 991 WARD COVE	YES	34972	yes	9 YRS
James A Stanker 1712 FIRST AVE KETCH	YES	SO5B34835 33725	YES	25 YRS
Joseph F. Stanker	yes	S05B164571 33725		24 YRS
E. A. Erickson	yes	24215	yes	19 years
Wm. A. Lucas Sr.	yes	24175	yes	41 years

(Letter of Petition #2)
(Resident 1977 Handtrollers)
(District #1)

PAGE #2

By Certified Mail to:
Gov. Jay Hammond
Limited Entry Commission
Dept.,of Fish and Game
State Board of Fish and Game
Ketchikan Board of Fish and Game

4 PAGES, 6 of 45 SIGNERS

Terry Gardiner State Legislature
Robert Zeigler State Legislature
Oral Freeman State Legislature
Alaska Power Trollers
Ketchikan Daily News
Alaska Seiners Association

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Name & Address	H.T. Permit 1970-1977	H.T. Permit Number	STATE RES. yes-no		RES. yrs.
John L. Leslie Box 6531 Ketchikan	Yes	S05B39517X 24331	✓		21
M. A. Jack Rt 1 Box 680 Ketchikan AK	yes.	S05B32900L	✓		33
Lawrence Carson Rt. 1 Box 426 Ketchikan	Yes	S05B33020U	✓		37
R V Ellis PO Box 8201 Ketchikan	Yes	S05B14832M	✓		34
John L Minnich 3826 Hillside Dr. Ketchikan AK	yes	S05B33307W	✓		38
R T Aymond Box 8135 Ketchikan	Yes	S05B29495P	✓		19

(Resident 1977 handtrollers)
(District #1)

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(Letter of Petition #2)
P.O. Box 5260
Ketchikan, Alaska 99901

Metlakatla Handtroller Assn.
Box 42
Metlakatla, Alaska
99926

Name & Address	H,T, Permit 1970-1977	H.T. Permit Number	STATE RES. yes-no		RES. yrs.
Donnell Williams Sr. Metlakatla AK.	X	S04B19553K.	X		32
Samuel Williams Sr. Metlakatla AK	X	S05B17652E	X		28
Cobby Williams Sr. Metlakatla AK	X	S05B19258F	X		55
Ronald E. Wimbish Metlakatla	X	S05B36141N	X		26
Alex Atkinson Metlakatla AK	X	S04B23185L	X		36
Frank Ryan Sr	X	S04B31872P	X		56
Ronnie J. Henry Metlakatla AK	X		✓		24
Wm C. Christensen Metlakatla AK	X	S05B31529BK	✓		7
Elizabeth A. Metlakatla AK	X	S05B34716L	✓		33
Tony A. Wellington Metlakatla AK	X		✓		46
Samuel Clayton Metlakatla AK		S05B17549N	✓		32
Daniel C. Kinegak Metlakatla AK	X	S05B22252M	✓		33
Irene A. Olsen Metlakatla	✓		✓		31
Irene D. Wilson Metlakatla	X	S05B37215N	✓		31
Lawrence Henry Metlakatla	X	S05B18314H	✓		38

(Resident 1977 Handtrollers)
(District #1)

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Name & Address	H.T. Permit 1970-1977	H.T. Permit Number	STATE RES. yes-no		RES. yrs.
Benjamin J Etc	Box 264 Met. AK.	X	S05B23255ND	X		38
Edward S Tuttle	Met. AK	X	S05B16544G	X		45
Truman McAllister Jr	Box 201 Met. AK	X	S05B33786G	X		39
Nile Wallace	Box 473	X		X		33
Richard Rambo	Box 22 Met. AK	X	S05B27477K	X		57
Cecil C Stinson	Box 422 Met. AK	X	S05B27402K	X		52
[illegible] Co		X		X		30
[illegible]	PO 126 Met AK	X	S05B155120	X		41
[illegible]	Box 455 Ketchikan	X	S05D32547H	X		66
[illegible]	Box [illegible] Met AK	X	S05S5B31461K	X		1

STATE OF ALASKA

Inter-Department Route Slip

TO:
MAIL STATION NUMBER_____

DEPARTMENT_____

ATTENTION Rep Freeman

☐ Approval	☐ Note & Return
☐ Signature	☐ Initial & Return
☐ Comment	☐ Return As Requested
☐ Contact Me	☐ Return For Approval
☐ Prepare Reply	☐ Necessary Action
☐ For Your File	☐ Your Information

Remarks:

hand trolling testimony

FROM:
MAIL STATION NUMBER_____

DEPARTMENT_____

BY Carla DATE 3/21

02-002 (REV.10/73)

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

March 13, 1980

The Honorable Don Bennett
Alaska State Senate
Pouch V, State Capitol
Juneau, Alaska 99811

Dear Senator Bennett:

Following the public hearing held by your committee on hand troll regulations you requested that any further comments be sent to your office in writing within a ten day period of time. This letter will constitute the Alaska Department of Fish and Game's comments regarding regulations for the troll fishery in 1980.

I have enclosed a troll fishery review paper drafted by our Department explaining actions taken by the Board of Fisheries at their December 1979 meeting. The necessity for regulating efficiency of the hand troll fleet in terms both of conservation and preserving the present allocation balance between various gear groups is addressed. I recognize that during your hearing you heard a fair amount of public testimony from the hand troll fleet reacting adversely to the proposed limitations on their efficiency, and in particular to the two line limit concept. In actual fact, the limitation is presently two gurdies for those hand trollers who fish gurdies and up to four poles for those rod and reel fishermen involved. Based on our experience in troll fisheries hearings, we believe that you heard from only a minor portion of the hand troll fleet, namely those who have become "professional" hand trollers. In general, the hand troll fleet, during hearings held last fall by the Commercial Fisheries Entry Commission, opted for a greater number of permits rather than increasing efficiency. The Board of Fisheries publicly indicated their willingness to manage the troll fishery as a single unit if in fact the allocation balances could be maintained under this type of scheme. The only way the Board saw that this would be possible would be to limit the number of potential hand trollers who would enter the fishery to between 500 and 600. Obviously with 2,150 units, if all these units opted to increase their efficiency to four gurdies, the total harvesting power of this fleet would increase dramatically and significant social and economic changes would ensue in the non-hand troll segments of Southeastern Alaska's fishing industry.

It is a fact that in recent years a portion of the hand troll fleet has opted toward larger, faster vessels and hand gurdy gear, which has allowed them to increase their efficiency significantly. Numerically, this part of the hand troll fleet is in the minority. We believe that it is this minority you were

hearing from at your public hearing. The Board of Fisheries, conversely, over several years of covering this topic in public hearings and in testimony from various user groups and biological staff, has heard from seiners, power trollers, gillnetters, recreational fishermen, subsistence fishermen, the hand trollers themselves, and the biologists regarding the need for escapement. We believe that any action taken by your committee to reverse part of this Board action without considering the implications in terms of overall management of the fishery would raise more questions and problems than it would solve.

As shown in the enclosed effort and catch information, the hand troll fishery has placed a significant increase in effort on our salmon stocks in recent years. The entire Alaskan troll fishery is being closely watched by interests in the other Pacific coastal states and Canada who wish to see overall effort and catches reduced so that more salmon will reach their waters and user groups. The vehicles they may attempt to use are the North Pacific Fishery Management Council, the Secretary of the Interior, and the courts. Federal or court ordered decisions could wreak havoc on our troll fishery as a whole. Our strongest argument against outside intervention in our troll fishery is the regulatory efforts that have been made to stabilize fishing effort by troll gear and to rebuild our king salmon stocks. To allow major effort increases in our fishery that will increase catch levels of king salmon from depressed stocks originating from anywhere on the west coast invites intervention into the management of our fishery that could reduce our catch levels and drastically restructure our fishery.

We appreciated the chance to appear in front of your committee and stand ready to provide you with any further information you may require to aid you in reaching your decisions.

Sincerely,

Ronald O. Skoog
Commissioner

Enclosure

DRAFT March 11, 1980

1980 TROLL FISHERY MANAGEMENT AND NEW REGULATIONS AND DECISIONS AFFECTING THE TROLL FISHERY

This document is intended to familiarize interested individuals with regulations which will affect the troll fishery in 1980, and the changes in the fishery that have created the need for these regulations. The provisions of this plan are primarily intended to address allocation and resource problems for chinook and coho salmon stocks returning to Alaskan streams. Chinook salmon stocks originating from streams or hatcheries located along the coast south of Alaska will benefit to some degree by attempts to stabilize trolling effort on mixed stocks in waters off Alaska. This management strategy and the 1980 regulations have been approved by the Board of Fisheries and the North Pacific Fishery Management Council.

Two major changes have occurred in the troll fishery in recent years that have caused increased fishing pressure on depressed or heavily utilized chinook and coho salmon stocks and shifts in the allocation of the coho salmon harvest among resource user groups.

First, both the hand troll and power troll fisheries have improved in their capability to effectively harvest salmon. Hand trollers have increased greatly in numbers as no limited entry program has been placed on hand trolling to date. Individual units of hand troll gear have increased in efficiency due to widespread conversion from the use of sport rods to hand gurdies capable of using a far greater number of hooks and the development of a "full time" hand troll fleet. Power trollers were limited in numbers in 1975, but heavy capitalization has increased the efficiency of the average power troll vessel. The building of larger vessels capable of ranging greater distances, staying on the fishing grounds for longer periods of time and fishing more gear has contributed substantially to this efficiency increase. To summarize, in both the hand and power troll fisheries high prices for salmon and increased effort put forth by individual fishermen have contributed heavily to the overall increased efficiency of the troll fleet.

The second major change in the troll fishery has been a shift of fishing effort from inside districts to the outer coastal fishing grounds. This effort shift has occurred primarily with the power troll fleet and has resulted in major changes in the areas where the bulk of the troll catch is occurring. Tables 1 and 2 show the magnitude of this effort shift over the last five seasons, both in terms of number and percentage of landings and the number and percentage of cohos caught from inside and outside districts. This trend is reducing the number of coho salmon that are reaching the inside districts, thus changing the allocation balance between sport fishermen, seiners, gillnetters, hand trollers, and power trollers. Also, by applying more fishing effort on coho salmon stocks further away from their home streams, earlier in the season, overall fishing pressure on coho salmon has increased to the detriment of the stocks.

In formulating policy and regulations for the 1980 troll fishery the Board of Fisheries addressed two major concerns. First, the Board attempted to stabilize effort in the troll fishery to avoid increasing fishing pressure on individual salmon stocks or aggregations of stocks to guard against overfishing. Second, the Board attempted to insure that all resource user groups continue to receive approximately the same proportion of the coho salmon resource as has occurred in recent years.

Prior to establishing policies and regulations for the 1980 troll fishery the Board of Fisheries took into consideration a decision by the Commercial Fisheries Entry Commission to limit the hand troll fishery to 2,150 units of gear. This number is equal to the number of hand trollers that made salmon landings in 1979 and it would allow an expansion of the overall efficiency of the hand troll fleet in future years, since rod and reel trollers may convert to more efficient gurdy gear. The Commission's decision to issue a large number of permits was based on extensive hearings held last fall. The majority of the persons testifying at the hearings indicated that they would prefer a limited entry system that would provide for a large number of participants in a fishery that would be easy to enter.

In order to stabilize effort in the troll fishery, conserve the coho and chinook resources, and maintain recent allocation patterns for coho salmon, the Board of Fisheries adopted the following policies and regulations that will be in effect during the 1980 season:

1. The Board established a provisional hand troll - power troll policy on coho harvest in Southeastern Alaska which establishes a goal of power troll harvest of approximately 80% of the coho troll catch and a hand troll harvest of 20%.

2. Limits to the amount of legal gear were placed on both the hand troll and power troll fisheries as follows:

   Hand trollers may fish two gurdies or up to four sport poles. Gurdies and sport poles may not be fished in combination. A sport pole may be fished with a maximum of one leader and two hooks.

   Power trollers are limited to four lines except in the Fisheries Conservation Zone (Federal waters) north of the latitude of Cape Spencer where six lines may be used. This limited exception to the four line limit is designed to allow economically reasonable "prospecting" of the Fairweather Grounds.

   No more than six troll gurdies may be mounted on board any salmon troll vessel.

3. In order to curtail fishing pressure on coho salmon early in the season before run strength can be determined, and to allow more coho salmon to move further along their migration routes and to the inside waters where spawning streams are located, all commercial trolling will be closed for ten days in mid-July. This 10 day closure will take place <u>unless</u> the coho run appears well above average in magnitude and the movement of coho to inshore waters appears to be good. This closure will apply to trolling for all species of salmon.

4. Other regulations applied to the troll fishery during the 1979 season will remain in effect except for minor changes as noted in the following section.

The new regulations that will be in effect during the 1980 season are intended to facilitate enforcement of existing regulations, and improve microwire tag recovery. (Microwire tags are one of the most useful and important sources of management data.)

1. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining its size. Regulations establish a minimum size to protect immature fish.

2. The heads of all king and coho salmon must remain attached to the fish until sold. This will ensure recovery of coded wire tags placed in the snouts of Alaskan coho and chinook salmon.

3. No troll vessel may be used to take salmon when coho salmon are aboard in an area closed to the taking of coho by troll gear. This is an enforcement step to inhibit fishing in closed waters.

4. The boundaries of districts 13, 14 and 16 in the Cross Sound area were changed as follows to be more readily identifiable by fishermen:

   District 13: All waters north of a line projecting southwest from the southernmost tip of Cape Ommany, south of a line projecting west from the southernmost tip of Cape Spencer, west of a line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point, and west of a line from the southernmost tip of Point Hayes to the northernmost point of Point Thatcher.

   District 14: All waters of Icy Strait west of a line from the southernmost tip of Point Couverden to the Point Augusta light, east of a line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, and north of a line from the northernmost point of Soapstone Point to the westernmost point of Column Point.

   District 16: All waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

The following modifications of existing regulations will be implemented during the 1980 season in response to fishermen's requests that closed periods be during the strongest tides:

1. The open periods for trolling in district 12 north of the latitude of Point Hepburn, district 14, sections 15-A and 15-C, and for hand trolling only in district 1 during the April 16 through September 20 time period will be as follows for the 1980 season:

   April 16 - April 21

   April 28 - May 5

   May 12 - May 19

   May 26 - June 2

   June 9 - June 16

   June 23 - June 30

   July 7 - July 14

   July 21 - July 28

   August 4 - August 11

   August 18 - August 25

   September 1 - September 8

   September 15 - September 20

2. To provide increased fishing area for the villages of Hoonah and Elfin Cove without endangering coho salmon, in the Cross Sound portion of district 14 south of a line from Point Lavina to Cape Spencer, trolling will be allowed for seven days per week prior to August 1. After August 1 the 8 on, 6 off fishing pattern will be in effect in all of the district. As August 1 falls during a closed period, the Cross Sound area will close August 1 until the beginning of the next 8 day open period.

3. To facilitate enforcement by Fish and Wildlife Protection, the wording in the regulation requiring that hand troll and power troll vessels be marked now reads as follows:

   (c) Each licensed power troll vessel must display its permanent vessel license plate number in permanent symbols of black on a white background. Each number must be at least twelve inches in height, at least one inch in width and must be permanently affixed on both sides of the cabin or hull so as not to be obscured. The numbers must be displayed at all times until the end of the calendar year.

(d) Each licensed hand troll vessel must display the letters HT in permanent block letters. Each letter must be painted on both sides of the vessel hull or cabin in a color contrasting with the background, at least four inches in height, and at least one-half inch in width, plainly visible and unobscured at all times. The letters must be displayed at all times until the end of the calendar year. No hand troll vessel may display its permanent vessel plate number (ADF&G number) in any location other than on the vessel license plate.

Gear permits are tied to an individual and not a vessel. A licensed vessel can have different gear types fished from it by holders of various entry permits. A licensed vessel does not actually become a hand troll vessel or power troll vessel until an entry permit holder for one of these gear types actually begins fishing the gear from the vessel. Therefore, power troll vessels must display their vessel license plate number and hand troll vessels must display the letters HT beginning at the time the gear is first fished from the vessel. Once the required markings are displayed they must remain displayed for the remainder of the calendar year.

Limited Entry for the Handtroll Fishery

As mentioned earlier, the permanent entry level for the hand troll fishery has been set by the Commercial Fisheries Entry Commission at 2,150. This number is equal to the number of persons that actually held hand troll permits and made landings of salmon during the 1979 season. Limited entry for hand troll gear is expected to go into effect in 1981. Interim permits will be issued for the 1980 season only to persons who landed hand troll caught salmon on a salmon hand troll interim-use permit at least once during the 1975-1979 time period. During the fall of 1980 the Entry Commission intends to hold public meetings at various locations throughout Southeastern Alaska concerning the proposed structure of the point system that will be used to determine who will qualify for permanent entry permits.

Inseason Management - 1980

Within the framework of the new regulations described in this plan and the existing regulations that will remain in effect, the Department of Fish and Game staff may make inseason adjustments of fishing time and open areas necessary to achieve adequate escapements of coho salmon. These adjustments will be made using the Commissioner's Emergency Order authority when biological circumstances require its use. (AS 16.05.060). It must be recognized that sufficient coho salmon must be allowed to reach inside fisheries to permit them to operate at normal levels and to provide for adequate escapements. Adjustments of regulations to achieve the 80%/20% allocation split of the troll catch of coho salmon will not be made inseason. The Board of Fisheries adopted this provisional policy as a goal to be met by Board regulation adjustment from year to year, not by use of the Commissioner's Emergency Order authority.

After the mid-July 10 day closure, catches will be monitored to determine overall run strength with special emphasis on the abundance of coho in inside areas. If catches of coho salmon are normal and the run strength to inside areas appears average, the troll fishery will remain open under the regulations listed in the Alaska Commercial Fishing Regulations Finfish book for 1980. Weak returns to inside areas will necessitate further inseason adjustments of fishing time, open areas, and a possible early closure of the coho season. If the overall coho run in the region appears weak in early August a second ten day closure of all trolling may become necessary.

General Outlook

The troll fishery in Alaska has been undergoing rapid change as a result of extensive capitalization in both the hand troll and power troll segments of the fleet and the increasing numbers of hand trollers. Individual gear units have become more efficient in a number of ways including the effort put forth by individual fishermen in response to competition and the need to realize a return on large investments. This trend toward increased efficiency has been hastened by substantial fish price increases in recent years. Many fisheries have undergone similar evolution, and the end result is that more regulations are required to conserve and maintain the fish stocks involved.

The troll fishery is spread over vast areas and operates almost entirely on mixed stocks of salmon. Due to its complexity, effective regulations to protect stocks are not readily found. As new information becomes available, new management approaches to regulation of the troll fishery can be expected.

TABLE I

HAND & POWER TROLL LANDINGS
Inside Fishing Areas vs. Outside Fishing Areas
1975 - 1979

	HAND TROLL				POWER TROLL			
	Outside[1/]	%	Inside[2/]	%	Outside	%	Inside	%
1975	621	9	6,599	91	3,591	35	6,653	65
1976	1,446	13	9,633	87	5,108	40	7,572	60
1977	3,497	16	18,138	84	7,661	53	6,658	47
1978[3/]	4,375	13	28,264	86	8,873	58	6,548	42
1979[3/]	5,573	22	19,830	78	10,952	77	3,304	23

TABLE II

COHO TROLL CATCH BY HAND & POWER TROLL GEAR
Inside Fishing Areas vs. Outside Fishing Areas
1975 - 1979

	HAND TROLL				POWER TROLL			
	Outside[1/]	%	Inside[2/]	%	Outside	%	Inside	%
1975	2,332	6	38,682	94	51,813	30	121,333	70
1976	12,442	20	71,291	80	234,707	54	201,281	46
1977	23,945	15	131,749	85	161,278	46	189,836	54
1978[3/]	62,919	16	319,611	84	463,792	65	240,865	35
1979[3/]	45,671	18	199,345	82	531,379	80	141,832	20

1/ Outside catch reporting areas are 104, 152, 113, 154, 116, 157, 181, 186, 189.
2/ Inside catch reporting areas all other areas.
3/ 1978 & 1979 figures are preliminary.

Table III. Coho catch by gear type for Southeast Alaska - excludes Yakutat, 1964 to present.

	Purse	%	Drift Gillnet	%	Troll	%	Other	%	Total
1964	506,502	37	156,980	12	729,284	52	8347	1	1,401,113
1965	557,008	40	166,452	12	695,241	49	816		1,419,517
1966	452,088	39	162,141	14	524,663	46	18,203	2	1,157,095
1967	188,988	26	134,028	18	420,602	57	2322	1	745,940
1968	463,557	33	204,213	15	748,369	53	3820	1	1,409,959
1969	109,972	21	65,056	13	361,143	68	693	1	536,864
1970	294,559	45	163,881	25	198,606	30	3009		600,055
1971	326,264	37	159,143	18	388,232	44	314	1	873,953
1972	390,321	27	275,428	19	781,852	54	5273	0	1,452,874
1973	129,593	16	124,338	16	539,044	68	324	0	793,299
1974	166,757	14	186,543	16	845,113	70	1006	0	1,199,419
1975	70,201	18	102,331	26	213,877	55	562	1	386,971
1976	87,584	11	156,223	20	523,556	68	1223	1	768,586
1977	160,519	19	183,702	22	498,985	59	1374	1	844,580
1978*	137,053	10	186,798	14	1,016,863	76	3932	0	1,344,646
1979*	122,401	11	80,318	7	891,839	81	3684	1	1,098,242

* Preliminary

Table IV

SALMON HAND TROLL PERMITS ISSUED BY CFEC

Year	Res	Non-Res	Total	Percent Non-Resident
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1978	3634	288	3922	7.3
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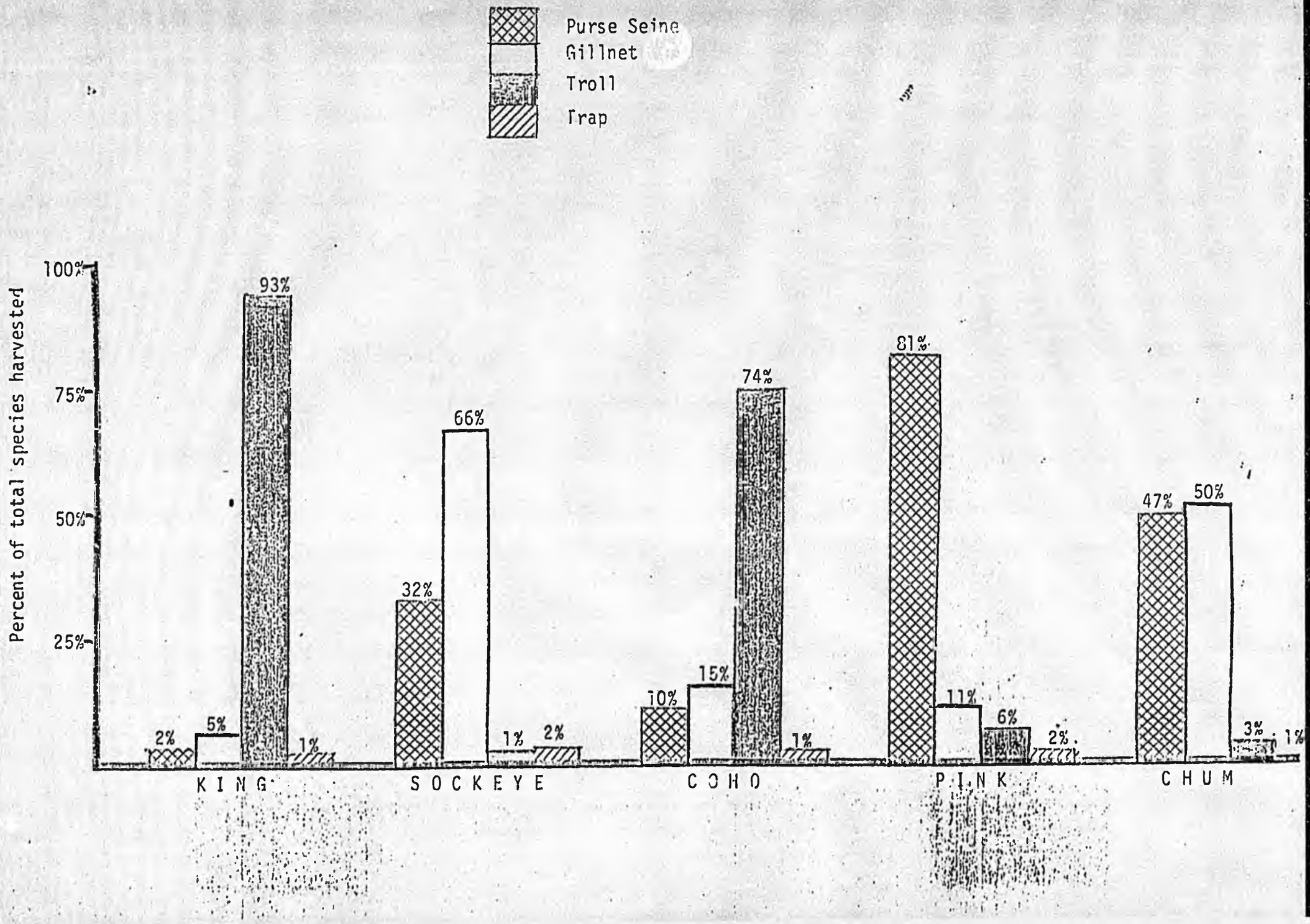
In Numbers of Fish

1975 - 1979

	Power Troll		Hand Troll	
Year	Number of Fish	Percent of Total Catch	Number of Fish	Percent of Total Catch
1975	173,146	81%	41,014	19%
1976	435,988	83%	88,733	17%
1977	351,114	69%	155,813	31%
1978	722,099	66%	378,588	34%
1979	673,211	73%	245,016	27%

Note: 1978 and 1979 data are preliminary.

Figure 1 Percentage of king, sockeye, coho, pink and chum salmon harvested by gear type in Southeast Alaska, 1979.



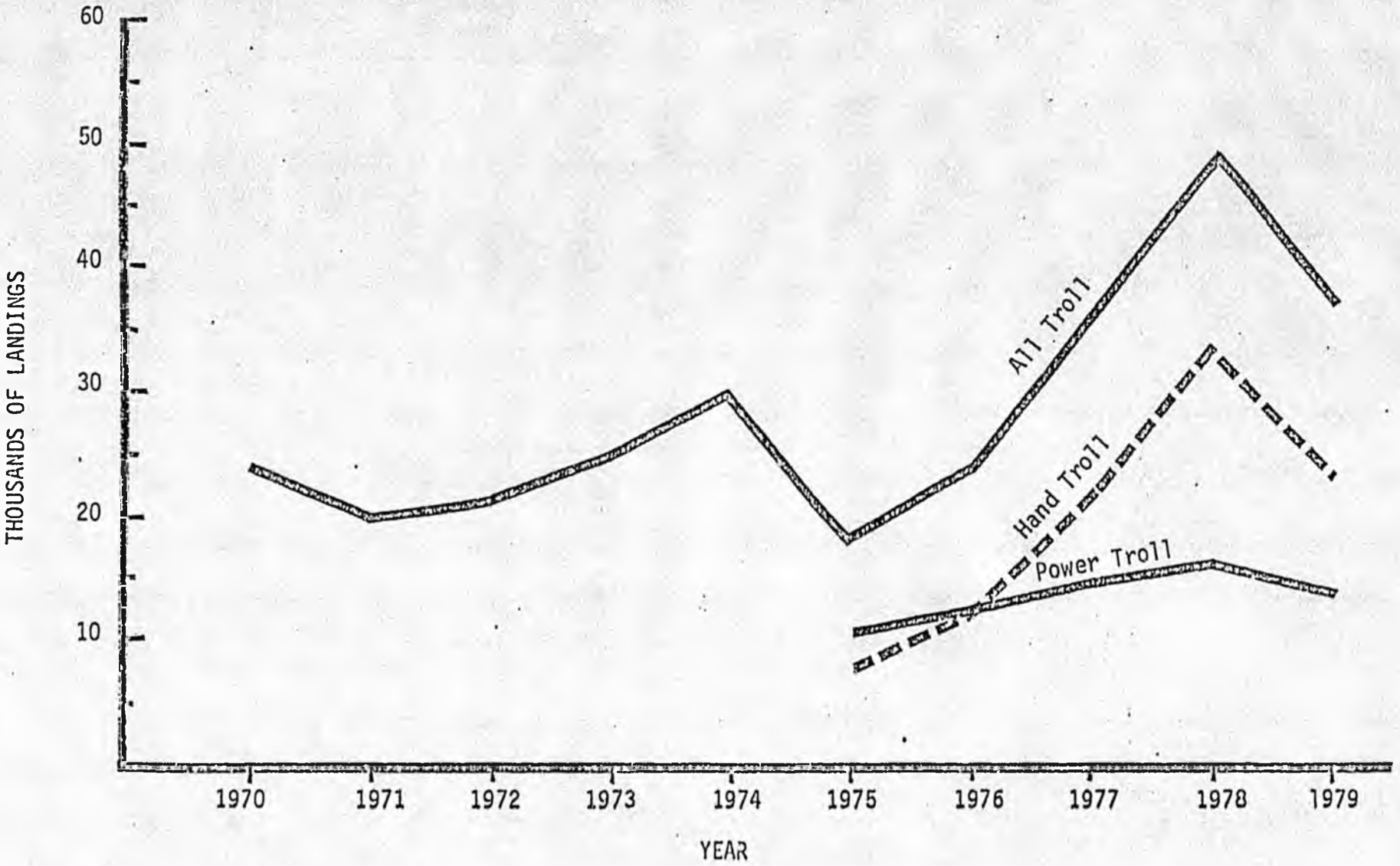


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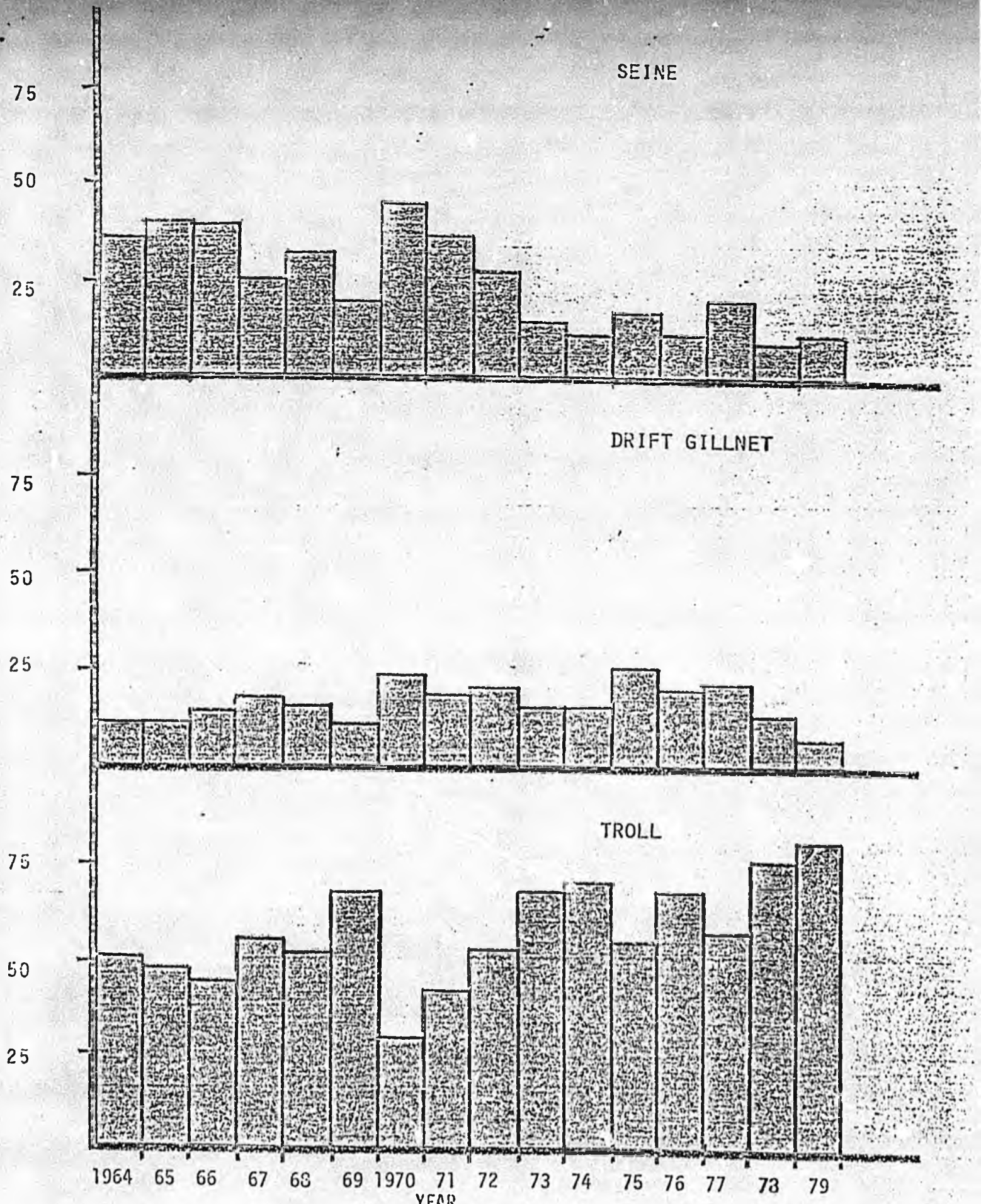
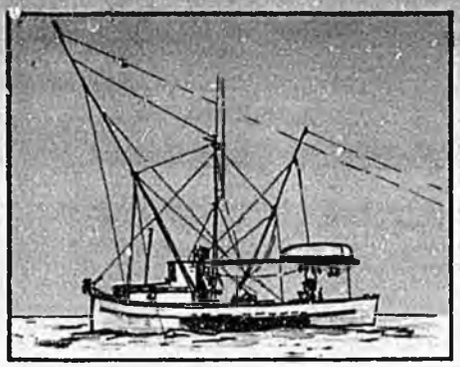


Fig. 3. Percentage of Coho Harvest by gear type for Southeast ALaska, excluding Yakutat, 1964 to present



Alaska Trollers Association

REPRESENTING ALASKA POWER TROLLERS

205 North Franklin Street
Juneau, Alaska 99801
(907) 586-9400

March 6, 1980

Senator Don Bennett
Chairman
Administrative Regulation Review Committee
Pouch V
Juneau, Alaska 99811

RE: HANDTROLL REGULATIONS

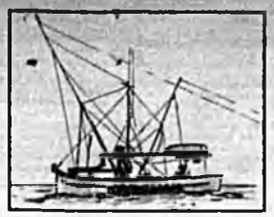
Dear Senator Bennett:

The Alaska Trollers Association represents the power troll fishermen of Alaska. We strongly urge you and your committee to approve the handtroll regulations as set by the Board of Fisheries.

One of the most confusing aspects of the current hand troll situation is the nature of the present hand troll fishing fleet. Perhaps the most important thing to realize is that this fleet is radically different than it was in 1975 when limited entry was imposed on the power troll fleet.

At that time the hand troll fleet was small (less than 2000) and relatively inefficient, landing only 19% of the Coho catch. Limited entry stabilized the number of power trollers at less than 1,000. In 1975 there were 849 power troll permits issues, and today there are 939. That reflects a power troll fleet increase of 10.6%. During the same period the hand troll fleet, in the absence of limited entry increased by 83.2% (from 2017 in 1975 to 3898 in 1979). This enlarged hand troll fleet is using more boats in the 30 to 40 foot range, and an increasing number of hand troll boats are approaching power trollers in fishing efficiency. The result of the uncontrolled entry to the hand troll fishery was a jump from 19% of the Coho catch in 1975 for the hand trollers to 34% in 1978 (before area and time limits were imposed).

When power trollers supported limited entry in 1973 it was based on the premise that limited entry (which in fact removed a substantial number of power trollers from the fishery) would stabilize the fleet. There was, of course, no guarantee that fishing would be successful, just that the available fish would be shared amoung a fixed number of power trollers. At the time that limited entry was introduced, the hand troll fleet



Alaska
Trollers
Association

was composed almost exclusively of small boats, almost all of which were fishing sport gear. The reason for this was clear: before limited entry any boat that troll fished could easily rig a system to use power to pull its gear; all of the boats that stayed as hand trollers were content to operate in a low-cost, low efficiency manner.

The present large and efficient hand troll fleet is a direct result of the imposition of limited entry. With power troll permits limited, the only option available to those wanting to enter the troll salmon fleet at the commercial level was to use multiple hand gurdies; and in many of these boats the method of powering the reels that pull the gear is the only difference between hand and power trollers.

This new and efficient group of hand trollers in effect used a loophole in the limited entry law, and the effect has been that the power trollers who have been under limited entry for five years are now sharing a significant portion of the available fish with a fleet that wasn't supposed to exist when the limited entry numbers were computed.

In summary, we feel that the Board of Fisheries has done the best they could in equitably dealing with an extremely difficult question. This does not in any way suggest that imposing controls on the hand troll fleet does not work real hardships on men and women now engaged in hand trolling; it does, but through the years many other fishermen have had to pay a similar price, for the number of fish available to be harvested, in any fishery throughout the world, is limited.

Sincerely,

Stan Reddekopp

Stan Reddekopp
President
F/V Carol Ann

TABLE I

HAND & POWER TROLL LANDINGS
Inside Fishing Areas vs. Outside Fishing Areas
1975 - 1979

	HAND TROLL				POWER TROLL			
	Outside[1/]	%	Inside[2/]	%	Outside	%	Inside	%
1975	621	9	6,599	91	3,591	35	6,653	65
1976	1,446	13	9,633	87	5,108	40	7,572	60
1977	3,497	16	18,138	84	7,661	53	6,658	47
1978[3/]	4,375	13	28,264	86	8,873	58	6,548	42
1979[3/]	5,573	22	19,830	78	10,952	77	3,304	23

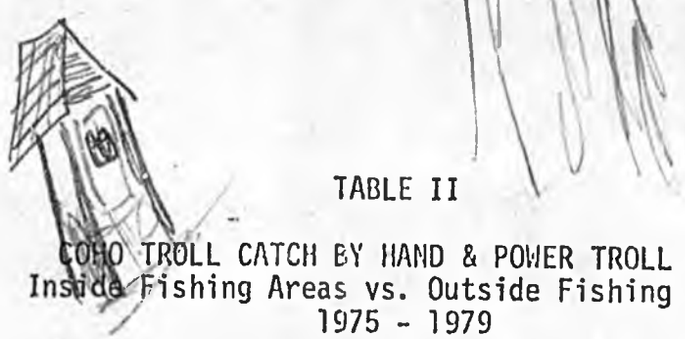


TABLE II

COHO TROLL CATCH BY HAND & POWER TROLL GEAR
Inside Fishing Areas vs. Outside Fishing Areas
1975 - 1979

	HAND TROLL				POWER TROLL			
	Outside[1/]	%	Inside[2/]	%	Outside	%	Inside	%
1975	.2,332	6	38,682	94	51,813	30	121,333	70
1976	12,442	20	71,291	80	234,707	54	201,281	46
1977	23,945	15	131,749	85	161,278	46	189,836	54
1978[3/]	62,919	16	319,611	84	463,792	65	240,865	35
1979[3/]	45,671	18	199,345	82	531,379	80	141,832	20

1/ Outside catch reporting areas are 104, 152, 113, 154, 116, 157, 181, 186, 189.
2/ Inside catch reporting areas all other areas.
3/ 1978 & 1979 figures are preliminary.

Table III. Coho catch by gear type for Southeast Alaska - excludes Yakutat, 1964 to present.

	Purse	%	Drift Gillnet	%	Troll	%	Other	%	Total
1964	506,502	37	156,980	12	729,284	52	8347	1	1,401,113
1965	557,008	40	166,452	12	695,241	49	816		1,419,517
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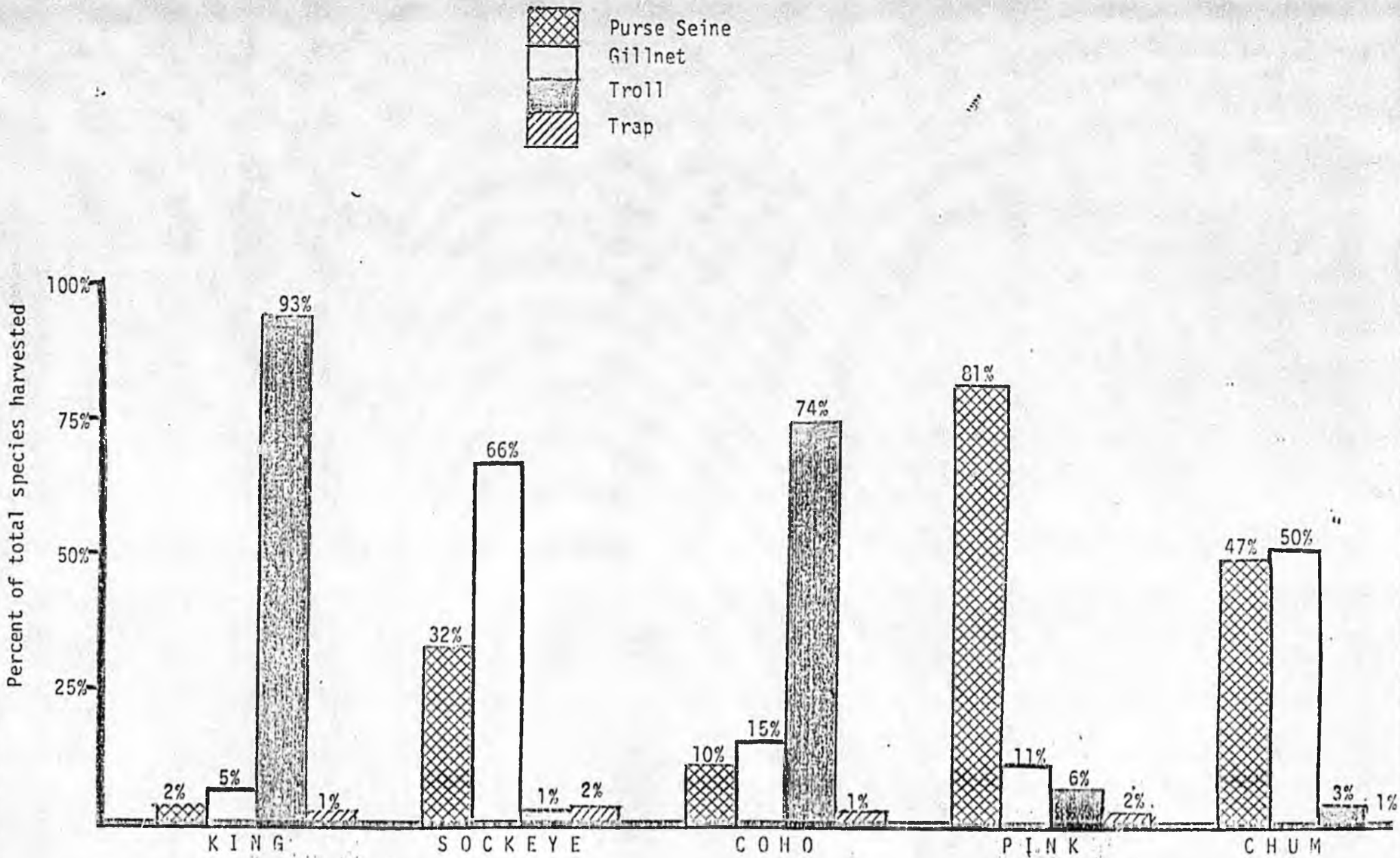
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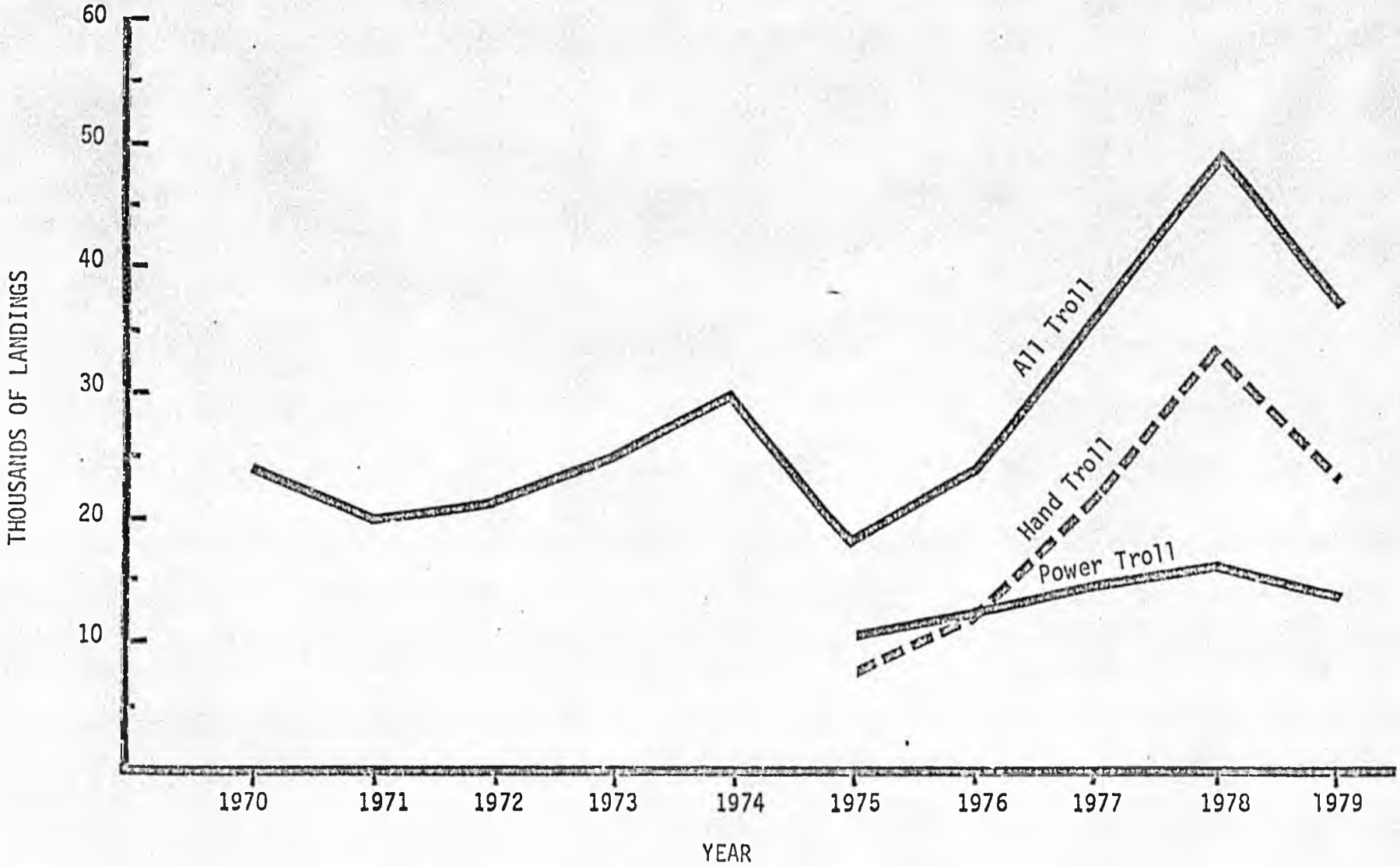


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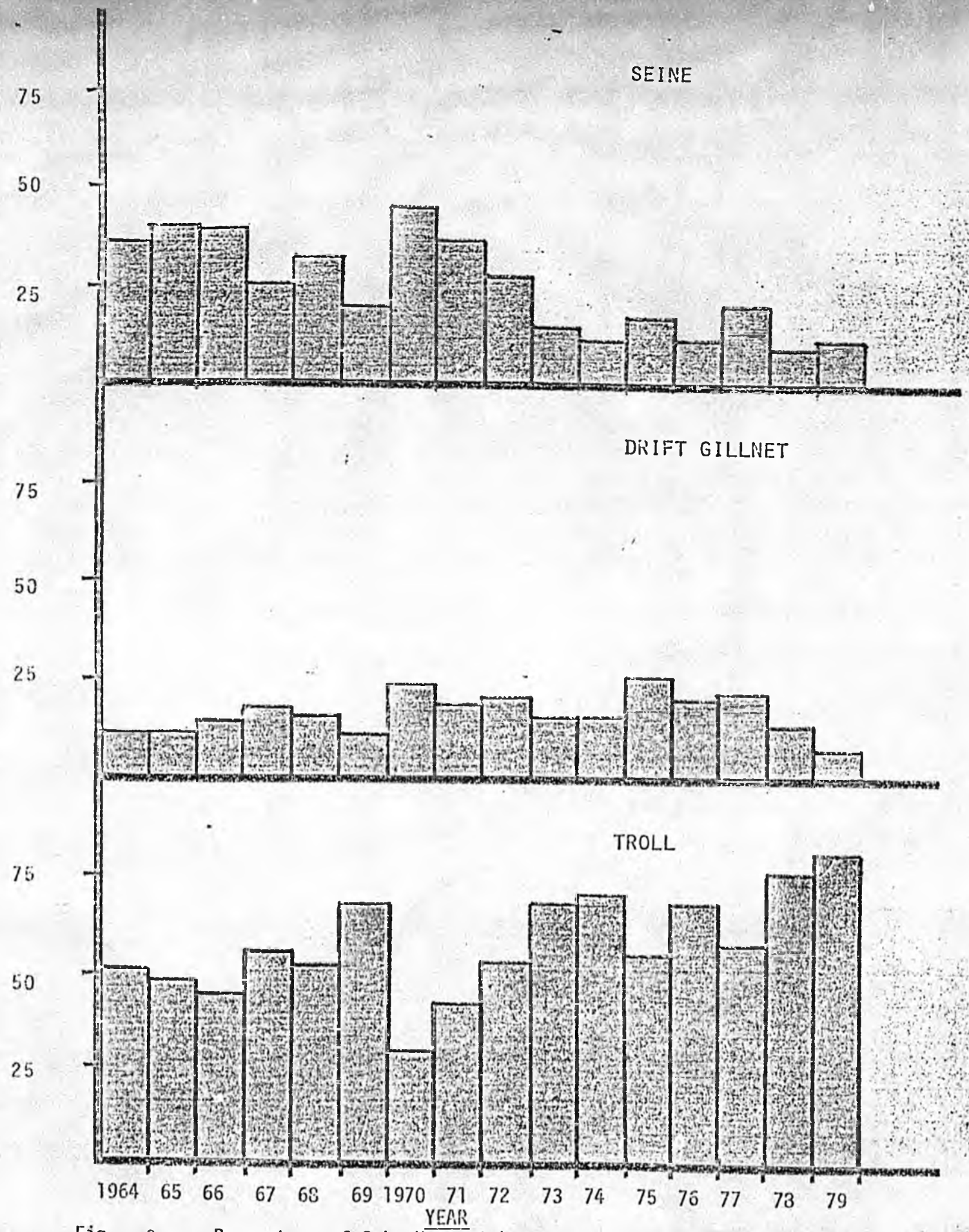


Fig. 3. Percentage of Coho Harvest by gear type for Southeast ALaska, excluding Yakutat, 1964 to present

Introduced 5-14-80

BY THE RULES COMMITTEE BY
REQUEST OF THE ADMINISTRATIVE
REGULATION REVIEW COMMITTEE

IN THE SENATE

SENATE BILL NO. 586

IN THE LEGISLATURE OF THE STATE OF ALASKA

ELEVENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to hand trolling."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 16.05.251 is amended by adding a new subsection to read:

(c) Regulations adopted by the Board of Fisheries may not differentiate between hand trolling and power trolling.

* Sec. 2. AS 16.05 is amended by adding a new section to article 6 to read:

Sec. 16.05.904. NUMBER OF TROLL LINES PERMITTED HAND TROLLERS. (a) A person engaged in hand trolling may deploy from a single vessel up to four troll lines if no more than two hand-troll gurdies are employed. Multiple hooks and leaders may be attached to each of the four troll lines allowed under this section.

(b) For the purposes of this section,

(1) "fishing rod" means a tapering jointed rod equipped with a handgrip and line guides upon which is mounted a hand-powered reel used to deploy and retrieve the trolling line;

(2) "hand-troll gurdy" means a troll gurdy powered by hand or hand crank that is not mounted on or used in conjunction with a fishing rod.

* Sec. 3. AS 16.05.940 is amended by adding new paragraphs to read:

(29) "hand trolling" means the taking of salmon with a troll line which is retrieved by hand power or hand-powered crank and not with the assistance of any type of machine that uses energy to develop mechanical power;

(30) "power trolling" means the taking of salmon with a troll line retrieved with the assistance of any type of machine that uses energy to develop mechanical power.

* Sec. 4. AS 16.43.100(a)(1) is amended to read:

(1) regulate entry into the commercial fisheries for all fishery resources in the state with the exception of the statewide salmon hand troll fishery;

* Sec. 5. AS 16.43.380(4) is amended to read:

(4) "gear" means the specific apparatus used in the commercial harvest of a species, including but not limited to purse seines, drift gill nets, set gill nets, and power troll gear; however, the term does not include apparatus used in hand trolling;

* Sec. 6. AS 16.43.380(8)(B) is amended to read:

(B) distinct subclassifications of gear [SUCH AS "POWER" TROLL GEAR AND "HAND" TROLL GEAR];

* Sec. 7. AS 16.43.380 is amended by adding new paragraphs to read:

(10) "hand troll" or "hand trolling" means the taking of a salmon fishery resource with a troll line which is retrieved by hand power or hand-powered crank and not with the assistance of any type of machine that uses energy to develop mechanical power;

(11) "power troll" means the taking of a salmon fishery resource with a troll line retrieved with the assistance of any type of machine that uses energy to develop mechanical power.

* Sec. 8. 5 AAC 33.310(b)(1), 5 AAC 39.270(a)(2)(A), and 5 AAC 48.090 are annulled.

fishing seasons
weekly fishing periods

increase to
4 lines/2 guides

allow spots-
fishing off troll
vessels

placed at the longitude of the outlet of Long Lake: the daily bag and possession limit is one king salmon from May 1 through July 12;

(B) Behm Canal and contiguous bays north of a line from Point Eva to Cactus Point around to a line from Point Lees to Elsie Point and west to a line between markers placed in the longitude of the outlet of Long Lake: closed to salmon fishing;

(C) sport fishing is prohibited in commercial fishing sections 1-C (between a line from Point Sykes to Point Alava and a line from Point Eva to Cactus Point) from May 1 through August 14;

(2) Thomas Basin: closed to salmon fishing;

(3) Boca de Quadra: from a point on the mainland near Black Island south to Slate Island to White Reef to Black Rock to Kirk Point on the mainland the daily bag and possession limit is one king salmon.

(c) Juneau area

(1) Stephens Passage and all contiguous waters north of the latitude of Limestone Inlet (south side) to a line from Point Louisa to Piling Point: closed to king salmon fishing from April 16 to June 15;

(2) Lynn Canal and all contiguous waters south of the latitude of Point Sherman to (A) the latitude of Point Couverden in Lynn Canal, and (B) the latitude of Limestone Inlet (south side) in Stephens Passage: the limit is one king salmon daily or in possession;

(3) All saltwater areas to one-fourth mile offshore between Point Bishop and Sawmill Creek including all of Douglas Island: the bag and possession limit is five dolly varden, provided that only two may be over 12 inches in length.

(d) Southeast Alaska: king salmon minimum size limit is 28 inches in length. King salmon caught under this size must be returned to the water immediately.

(e) Haines Area: all waters of Lynn Canal north of the latitude of Point Sherman: from April 15 to June 15, the limit is one king salmon daily or in possession.

(f) Wrangell Area

Stikine River (Greys Pass area): Inside a line from Babbler Point to Hour Point on Wrangell Island to Point Shekesti light (including all of Wrangell Harbor) to Five Mile Island light to Two Tree Island light to the western entrance of Blind Slough on Mitkof Island to a point 500 yards north of Bear Creek at 56° 42′ 30″ N. lat., 132° 43′ W. long. to the mouth of Jap Creek on the mainland shore; closed to salmon fishing from April 16 through June 14. In the remaining area of commercial fishing district 8 and that portion of commercial fishing district 7 north of the latitude of the channel marker in the narrows of Eastern Passage, the daily bag limit is one king salmon from April 16 through June 14.

Authority: AS 16.05.251(a)(2) and (3)

5 AAC 48.070. SPORT FISHING FOR SALMON WITH COMMERCIALLY CAUGHT TROLL SALMON IN POSSESSION. No person, while in possession of salmon taken by means of commercial troll gear, may sport fish for salmon in areas closed to commercial fishing.

Authority: AS 16.05.251(4)

5 AAC 48.080. MARKING OF KING SALMON CAUGHT FROM A COMMERCIALLY REGISTERED BOAT. All persons sport fishing from a commercially registered boat in waters closed to commercial fishing shall, immediately upon boating, mark all king salmon by removal of the dorsal (large back) fin.

Authority: AS 16.05.251(4)

5 AAC 48.090. SPORT FISHING FROM A COMMERCIAL SALMON TROLL VESSEL. No person may sport fish from a salmon hand troll or power troll vessel, as those vessels are identified by the marking requirements of 5 AAC 39.270(c) and (d), in any area except that this prohibition does not apply

(1) to charter vessels as defined in 5 AAC 72.040(27); and

(2) in derby areas during derbies authorized by the department.

Authority: AS 16.05.251(a)(4)

not annutted

20 AAC 05.310(a) is amended and a new subsection (c) is added to read:

20 AAC 05.310. OTHER DESIGNATED FISHERIES.

(a)
Salmon Fisheries

(8) Statewide (B)
power troll fishery
hand troll fishery

Publisher: Please make same correction in §310(

(c) As used in ~~this article~~ secs. 300-320 of this chapter, "hand troll" means the taking of a salmon fishery resource with troll lines which are retrieved by hand power or hand powered crank and not by any type of electrical, hydraulic, mechanical or other device or attachment.
(Eff. 1/25/80, Reg. 73)

Authority: AS 16.43.100(b)
AS 16.43.110(a)
AS 16.43.240(b)

20 AAC 05.320 is amended to read:

20 AAC 05.320. MAXIMUM NUMBER OF ENTRY PERMITS.

Salmon Fisheries

(9) Statewide B
power troll fishery..... 895
hand troll fishery.....2150
(Eff. 1/25/80, Reg. 73)

Authority: AS 16.43.100(a)(4)
AS 16.43.110(a)
AS 16.43.240(b)

New reg. as of 4/80
not in Blue Book - AAC

CHAPTER 21.
COOK INLET AREA.

5 AAC 21.430(a) is amended to read:

5 AAC 21.430. GEAR. (a) Bottomfish may be taken in all districts only by trawls, longlines, and mechanical jigging machines.

Authority: AS 16.05.251(a)(4),(7), (12)

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.392 is amended to read:

5 AAC 30.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the midpoint of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this section.

Authority: AS 16.05.251(a)(3),(4), (7)

5 AAC 30.393 is amended to read:

5 AAC 30.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho salmon by troll gear.

Authority: AS 16.05.251(a)(3),(4), (7)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.310(b)(1)(B) is amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) Salmon may be taken by hand troll and power troll gear from January 1 through December 31 in all districts except as provided in sec. 350 of this chapter and except as follows:

(1) during the period April 16 through September 20 salmon may be taken by hand troll gear:

(B) April 16 through April 21
April 28 through May 5
May 12 through May 19
May 26 through June 2
June 9 through June 16
June 23 through June 30
July 7 through July 14
July 21 through July 28
August 4 through August 11
August 18 through August 25
September 1 through September 8
September 15 through September 20

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.365 is adopted to read:

5 AAC 33.365. SOUTHEASTERN ALASKA-YAKUTAT CHINOOK AND COHO SALMON TROLL FISHERIES MANAGEMENT PLAN. (a) The management of the Southeastern Alaska and Yakutat areas chinook and coho salmon troll fisheries is complex because of mixing of the salmon stocks and fishing effort placed upon those salmon stocks by the subsistence, commercial and recreational user groups. The Board of Fisheries is concerned that some user groups, particularly those who traditionally fish the inshore and terminal salmon fishing areas as described in sec. 312(a)(1),(2) and (3) of this chapter, may be receiving reduced opportunities to take chinook and coho salmon because of increasing fishing effort by the salmon power troll fleet on mixed stocks of those species of salmon in the coastal and offshore salmon fishing areas as described in sec. 312(a)(4) and (5) of this chapter. The board is also concerned that continued increases in fishing effort on mixed chinook and coho salmon stocks may result in overharvest of individual salmon stocks or aggregations of those stocks, such that spawning escapement of those stocks to their natal streams may fall below that required to maintain a sustained yield of those stocks. Because of the above concerns, the board has adopted regulations that control the time, area of operation, and efficiency of the salmon power and hand troll fisheries.

(b) The board recognizes that changes in size and timing of the chinook and coho salmon runs and changes in the distribution of fishing effort by the hand and power troll fleet may require inseason adjustments to salmon fishing seasons, periods and areas to allow chinook and coho salmon to escape the coastal and offshore fisheries and move into the

From the Desk of

SENATOR DON BENNETT

Additional Testimony on proposed regs. for hand trolling -

By Larry Smith

789-9923

Juneau 465-2700

* Sport fishing registration discrimination against trollers
* Look closely @ 8 and 6 closure + gear limitations as they relate to "over kill" 7 & 6 statistics + undue restrictions
* also some measure to curtail out of state catch of fishery as it relates to hand-troll licenses

put a great amount of points on a person's Alaska residency + rural residency, & the amount of personal dependency upon the resource } to cut down on out-of-state resident fishing the hand-trolling fishery

1. ~~Personal Rights are being abused.~~

2. Practicable Data in respect to: 5 AAC 33.365 ; 5 AAC 39.270

a) Hand troll % allocation - overkill on restrictions

1. area/time closure
2. gear restrictions
3. out of state hand troll effort.
4. per deem for days stopped fishing by Fish & Game

might be advantageous to get out of state

b) Minimal field studies and escapement counts.

1. out of 2,000 rivers & streams in Southeast 15 to 20 have been looked at. Data used to manage fishery

only Alaska residents would be eligible for per diem

2. Personal Rights being abused. Adopted 1-15-79

a) 5 AAC 39.270 ; 5 AAC 48.090 No Public Hearing

b) 39.270 - Troll vessel is easily identified by gear it bears. undue harassment, to depict vessel with painted numbers or letters.

c) 48.090 - absolutely no reason for this reg. discrimination, violation of personal property, undue harassment. - could be easily policed ~~in other areas~~ by sport division in closed commercial areas. Sport caught fish to be identified by cut off fins.

3. Fish Enhancement. - Most funds for fish less for wasteful enforcement projects. First people to get cut are stream observers.

relates to the
5 AAC 33.310 Weekly Fishing Periods 8 and 6 closures

Comment: Does this amended regulation mean state wide? I believe these restrictions are compounding the economical impact on the dependent fisherman and the small community in conjunction with 5 AAC 39.270, "troll specs and operation," there is a definite overkill on the catch percentage allowed. I would like to raise the question of foreign vessel catch of our salmon stocks. I do not believe the troll fishery is directly responsible for the condition of the salmon.

2-line limit

Cut efficiency by 50% by only allowing 2 lines

5 AAC 33.365 Salmon Troll Management Plan

Comment: Again the Board of Fisheries and the ADF&G point directly at the troll fishery as the main problem in salmon management. This is true only in point that we fish on the open sea and feeding grounds and present a bureaucratic paper filing problem on which drawer to put the trollers! If the troll fleet is not sectioned off to certain areas, as the ADF&G seems bent on doing; there would not be stress on returning stocks in certain areas. The limited entry system was set up to limit the

mixed stock fish - caught by Federal Conservation Statistical (F&G) - not adequate

the number of fishermen, to protect the salmon stocks and insure a livelihood for the dependent fisherman; (granted a permit to be protected by the State and pursue his business.) Again, with my own experience in catching gill net burned fish in Cross Sound; I know the foreign fleets are taking our salmon. On paragraph (5) of the (Management Plan), the ADF&G has given themselves all power in relation to closing the season at any given time. Included is the right to write their own criteria to base their decision.

5 AAC 39.120 Registration

Comment: The licensing and vessel registration was consolidated into the office of the CFEC 2 years ago for simplicity and efficiency of handling. The ADF&G has given me absolutely no justification for this proposal. Carl Rosier and Don Collingsworth of the Commissioners office gave the reason of future gear restrictions. We don't have those restrictions, therefore, this is undue harassment and illegal regulatory practice. Where is ADF&G ~~credability~~ credability.

@ this time there is no existing regulation to use it on

5 AAC 39.270 Troll Specs. and operation - 2 line limit

Comment: As stated before, the total of the area/time closures and gear restrictions presents an overkill in the percentage allocations. I would like to make the point, that the number of dependent fishermen in the hand troll fishery, for example, could be estimated at 700. The number of out of state hand trollers is 379. These people have nothing else to do but push up here. (They could conceivably be catching 50% of the hand troll allocation. In other words our residents and fellow alaskans are being forced into poverty because of an outside interest.) This problem has ~~not~~ never been addressed. The ADF&G seems more interested in Empire Building than protecting the residents of this state.

out of state interests

5 AAC 48.090 Adopted 1-15-79 (No spot fishing) Introduced by enforcement people

Comment: There was no public hearing on this action to start with. Discrimination against hand troller. Undue hardship to not be able to use private property for recreation or

* gillnetter seiner longliner all can fish but troller cannot

subsistence. Some of us, in this world, have to fish for a living and or live closer to mother nature than the local supermarket. Even so, a bad season means no money to purchase food. A bias and unseeing ADF&G puts people, who need food, in a worrisome and precarious position. If the ADF&G wants to make sure "the closed to commercial areas" are policed; they can have all fish caught in such an area clipped of their fins. One small vessel and two people, 8 hrs. a day, could insure the sport division satisfactory results. As for outside closed areas, this regulation is grossly bias against the troller, discriminatory, unjust, violation of personal rights and definitely an undue hardship on the owner and his relatives and friends. * The latter, who are not allowed on the vessel for recreation or subsistence, cannot enjoy a day on the waters of S.E. Alaska for any reason other than Commercial fishing. This regulation is a perfect example of the ADF&G's insinuation that trollers are pirates to begin with and should be delt with in said manner.

* How much money from fish enhancement funding is going for enforcement? Compile funding requests for each division

Fish Enhancement!

Comment: Where is fish enhancement? 6 years have passed since the ADF&G has been talking about strengthening the native stock or hatcheries. All they have done is take money (tax dollars) and purchase police boats, charter airplanes, purchase guns, badges, and uniforms. To stock the streams with? We took the limited entry system in as a step needed to save our native runs. Also to insure safety to make a living. The ADF&G has not upheld their end of the bargain. All we have received from ADF&G is more time and area restrictions and very bias gear restrictions. There are certain areas and time closures that I want to single out as "temporary measures until?". These measures, instead of being dropped when the excuse was achieved, have been left as another monument from ADF&G that they have no intention of just regulation. Also any information you may volunteer or bring up to the Commercial Fishing Division, will be found in the proposed regulations

altered in a way to make it more difficult for trolling. I have been told by people that work as stream observers, etc, they are the first people let go by ADF&G if they run low on budget. Dave Cantillions own words about management and the resource is that the data they have is weak, they have tested or observed 15 to 20 rivers or streams out of 2,000 in Southeast Alaska, and the Coho stocks in southeast are not in danger but are borderline. Yet this is the excuse given for continual cuts and pressures put on the bush communities through the troll industry; or visa versa. I have thoughts about why these trends are moving against the troller but basically are without proof.

TITLE 5. FISH AND GAME.

PART I. COMMERCIAL AND SUBSISTENCE FISHING AND PRIVATE NONPROFIT SALMON HATCHERIES.

CHAPTER 21.
COOK INLET AREA.

5 AAC 21.430(a) is amended to read:

5 AAC 21.430. GEAR. (a) Bottomfish may be taken in all districts only by trawls, longlines and mechanical jigging machines.

Authority: AS 16.05.251(a)(4),(7), (12)

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.392 is amended to read:

5 AAC 30.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the midpoint of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this section.

Authority: AS 16.05.251(a)(3),(4), (7)

5 AAC 30.393 is amended to read:

5 AAC 30.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho salmon by troll gear.

Authority: ~~AS 16.05.251~~(a)(3),(4), (7)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.310(b)(1)(B) is amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) Salmon may be taken by hand troll and power troll gear from January 1 through December 31 in all districts except as provided in sec. 350 of this chapter and except as follows:

(1) during the period April 16 through September 20 salmon may be taken by hand troll gear:

(B) April 16 through April 21
April 28 through May 5
May 12 through May 19
May 26 through June 2
June 9 through June 16
June 23 through June 30
July 7 through July 14
July 21 through July 28
August 4 through August 11
August 18 through August 25
September 1 through September 8
September 15 through September 20

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.365 is adopted to read:

5 AAC 33.365. SOUTHEASTERN ALASKA-YAKUTAT CHINOOK AND COHO SALMON TROLL FISHERIES MANAGEMENT PLAN. (a) The management of the Southeastern Alaska and Yakutat areas chinook and coho salmon troll fisheries is complex because of mixing of the salmon stocks and fishing effort placed upon those salmon stocks by the subsistence, commercial and recreational user groups. The Board of Fisheries is concerned that some user groups, particularly those who traditionally fish the inshore and terminal salmon fishing areas as described in sec. 312(a)(1),(2) and (3) of this chapter, may be receiving reduced opportunities to take chinook and coho salmon because of increasing fishing effort by the salmon power troll fleet on mixed stocks of those species of salmon in the coastal and offshore salmon fishing areas as described in sec. 312(a)(4) and (5) of this chapter. The board is also concerned that continued increases in fishing effort on mixed chinook and coho salmon stocks may result in overharvest of individual salmon stocks or aggregations of those stocks, such that spawning escapement of those stocks to their natal streams may fall below that required to maintain a sustained yield of those stocks. Because of the above concerns, the board has adopted regulations that control the time, area of operation and efficiency of the salmon power and hand troll fisheries.

(b) The board recognizes that changes in size and timing of the chinook and coho salmon runs and changes in the distribution of fishing effort by the hand and power troll fleet may require inseason adjustments to salmon fishing seasons, periods and areas to allow chinook and coho salmon to escape the coastal and offshore fisheries and move into the inshore and terminal fishing areas. The department shall make inseason adjustments to salmon fishing seasons, periods and areas as follows:

(1) there may be no changes made to the chinook salmon fishing seasons, periods and areas during the period January 1 through June 14;

Foreign trawl and gill net fisheries have ~~impact~~ on ocean stocks. Troll is minimal in comparison

(2) there may be no changes made to the coho salmon fishing seasons, periods and areas during the period June 15 through July 9;

(3) about July 10 the department will evaluate the size and distribution of the coho salmon run and will close the Southeastern and Yakutat areas salmon troll fishery for 10 days, unless the department determines that the coho salmon run is larger than the last 10 year average and that acceptable numbers of coho salmon are moving into the inshore salmon fishing areas;

(4) following any July closure made in accordance with (3) of this subsection, the Southeastern Alaska and Yakutat salmon fishing areas will reopen for salmon hand and power troll fishing as provided for in the salmon hand and power troll fishing regulations contained in chaps. 30, 33 and 39 of this title;

(5) additional closures of the salmon hand and power troll fishing seasons, periods and areas may be required if the department determines that the strength of the coho salmon run in the inshore and terminal salmon fishing areas is less than required to provide a spawning escapement that will maintain the runs on a sustained yield basis.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),
(11)

CHAPTER 39.
GENERAL PROVISIONS.

5 AAC 39.120(g) is added to read:

5 AAC 39.120. REGISTRATION OF COMMERCIAL FISHING VESSELS.

(g) Registration requirements for salmon troll fishing vessels are as follows:

(1) the owner or operator of any fishing vessel that is to be used to take salmon with hand or power troll gear shall register that vessel with the department;

(2) no fishing vessel may be registered as both a hand troll and a power troll vessel;

(3) registration is accomplished by completing a form provided by the department and returning that form to a department office;

(4) any vessel that is to be used as a salmon troll fishing vessel must be registered before April 15 of each calendar year;

(5) this subsection becomes effective January 1, 1981.

Authority: AS 16.05.251(a)(2),(4),
(5),(12)
AS 16.05.490
AS 16.05.510

There are no fish to speak of at this pt. to evaluate

who draws conclusions on what basis. Free ticket to close fishing

no justification no public hearing registration was just consolidated to CFEC why does ADF&G want to compound registration discriminatory?

5 AAC 39.270(a) is amended to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION. (a) The maximum number of trolling lines that may be operated from any salmon troll vessel is as follows:

(1) from power troll vessels: no more than four lines, except that no more than six lines may be operated in that portion of the Seaward Biological Influence Zone north of the latitude of the southernmost tip of Cape Spencer;

(2) from hand troll vessels

(A) using hand troll gurdies: no more than two lines to which multiple leaders and hooks may be attached;

(B) using fishing rods: no more than four lines with no more than one leader and one lure or two baited hooks per leader;

(3) hand troll vessels may not concurrently use hand troll gurdies and fishing rods;

(4) for the purposes of this subsection, a fishing rod is a tapering often jointed rod equipped with a hand grip and line guides and upon which is mounted a hand powered reel used to deploy and retrieve the trolling line and a hand troll gurdy is a troll gurdy powered by hand or hand crank that is not mounted on or used in conjunction with a fishing rod.

Authority: AS 16.05.251(a)(4),(5),
(7)

Point Baker Hand Trollers Assn
Box 408
Pt. Baker, AK
99927

EVERETT, WA 982
PM
25 MAR
1990

Sen. Dom Bennett
Pouch V
Juneau, AK
99811

On February 5, 1980 the Administrative Regulations Review Committee of the Alaska State Legislative held a public hearing on hand troll regulations at the state capitol building in Juneau. Representing fifty some commercial hand trollers from the villages of Point Baker and Port Protection, centers of continuous hand troll activity for over fifty years, hand troller Tom Jacobson, of Port Protection, presented the following testimony:

The Point Baker hand trollers depend almost entirely on our hand troll income for our survival, there being no other viable alternatives in our small isolated village. Although our incomes are relatively meager, they have been sufficient to sustain an adequate standard of living. However, regulations designed to deny us the right to fish traditional grounds (such as the closure of outside waters), regulations to reduce our gear by 50% (the new two-line limit), and prospects for still more restrictions to come, will have a disastrous effect on the socio-economic well-being of our community. Not having the type of vessel or the capitol required for permits and gear in order to enter a different fishery, we will face the prospect of leaving homes and families to seek employment in town or succumbing to public assistance. If all this were the result of there being no more salmon it would be a regrettable but understandable circumstance. But, rather, all this is the result of insensitive and heavy-handed actions on the part of our State Bureaucracy, by using hand trollers as the scapegoat for problems unrelated to our catch of fish.

Let's put this situation in perspective. In the year of Highest Hand Troll Effort, 1978, of all the salmon caught in Southeast Alaska, only 3.1% were caught by hand trollers, according to Fish and Game statistics. And last year, both the number of hand troll permits fished and the hand troll portion of the catch dropped even lower. While hand trollers are being subjected to closure of outside waters, time restrictions on certain inside waters, a 50% reduction in gear, and more restrictions promised to come, the power trollers remain totally unaffected in state waters. They may continue to use four lines and fish waters closed to hand trollers only. Purse seining and gill netting will continue in areas and during times when hand trollers can not fish. The group of fisherman who have by far the least impact on the salmon resource and can least afford further economic hardship, hand trollers, are receiving the full brunt of the state's restrictions, while those fishermen who have had the greatest impact on the state's resource can continue fishing barely affected. Clearly, hand troll restrictions are primarily <u>not</u> conservation measures, but unwarranted manipulation of the livelihood of Alaskan citizens, elimination of small individual enterprises without justification or compensation.

We wish to underscore the fact that the Point Baker hand trollers support and encourage all meaningful regulations that will conserve threatened salmon stocks. But, we demand equal treatment under the law. The troll fishery must be regulated as one fishery with all fisherman sharing conservation efforts equally. In the seventy year history of Alaskan trolling, it wasn't until June 1978, with the closure of outside waters to hand trolling, that any regulation was made which applied only to one group of trollers. In the four years preceeding this discriminatory closure of outside waters, less than 3% of Southeast Alaska troll

caught kings and cohos were caught by hand trollers in outside waters. Yet to those hand trollers who traditionally fish these waters, it accounts for the major portion of their income. Clearly, this was not primarily a conservation measure, as power trollers and purse seiners who account for nearly all salmon taken in outside waters, were completely unaffected by this closure.

When the North Pacific Management Council submitted their 1979 troll plan to the Secretary of Commerce in Washington, D.C. with a provision to ban hand trolling in Federal waters, the U.S. Secretary of Commerce rejected the hand troll ban stating, " After studying all available information, I have determined that no conservation purpose is served by distinguishing hand troll from power troll gear. I have determined that this measure is inconsistent with the fairness and equity provisions of National Standard 4. The proposed ban would allocate fishing priveleges unfairly between two groups of fishermen who use essentially the same type of gear."

The State reacted by prohibiting Alaskan hand trollers from participating in the federal waters fishery, in spite of Washington's insistence that hand trollers are permitted to fish there. Hand trollers from other states may still legally fish these waters. The "allocation of fishing priveleges unfairly between two groups of fishermen who use essentially the same gear", to which the Secretary of Commerce objected, is precisely what the board resolved in its policy to allocate the coho catch between power trollers and hand trollers on an 80% - 20% basis. (By the way, power trollers and hand trollers use precisely the same gear, from hook to gaff hook, fish the same areas, with the same strategies, for the same species. The one and only difference is that power trollers use mechanical means to retrieve the gear while hand trollers use manual means.) This policy of allocating 80% of the troll caught cohos is the justification given for cutting the hand troller's gear in half, through the two-line limit regulation, while all other salmon fishermen, both troll and net, will continue to use the same amount of gear. Furthermore, if the Board is truly concerned about power trollers not receiving their 80% of the troll caught cohos, why do they propose to limit us to two lines twelve months a year, when cohos are only caught from mid June to mid September? The small proportion of cohos that is taken by hand trollers is not justified by a 50% reduction in our gear only, and certainly not for the nine months a year when cohos are never caught! While it is true that hand trollers in 1979 caught 204,000 more cohos than they did in 1975, power trollers caught over 500,000 more cohos in 1979 than in 1975. Clearly, the effort of power trollers has increased more than hand trollers, yet it is only the hand trollers who are having their gear cut by 50%. This is not conservation, but social and economic manipulation.

This unjust allocation policy between trollers also torpedoed the Commercial Entry Commission's attempts to implement a workable limited entry system for hand trollers. By directing the Commission to limit the number of permits to a number which guarantees power trollers 80% of the troll cohos, the number of proposed permits became so small that the majority of popular opinion at the Commission's public hearings on the matter disapproved of the Commission's plan. The Commission then proposed a number of permits unacceptably high by the Board's allocation standard, with the result that even more restrictions on hand trollers

were recommended. So now we have a limited entry policy which benefits no one whatsoever, the entrenchment of restrictions which were supposed to have been only for the interim until limited entry was enacted for hand trollers, and the proposal for new, even more restrictive regulations on the way. This, when the number of hand troll permits in Point Baker increased from fifty one in 1975 to fifty two in 1978.

The Point Baker Hand Trollers Association has spent countless hours, which we don't have, puzzling over our state's fishing bureaucracy, trying to play it by their rules, hoping to come up with solutions that will work by their standards. Money, which we don't have, has been spent attending hearings in the hope that justice may prevail. Our carefully considered, by-the-rules proposals have been politely received and studiously ignored without comment. We would be delighted to work with any legislators to draft legislation to bring some sense of fairness to this beaurocratic jungle. We hate to once again see the little guy needlessly squeezed out by the big guy through the power of our state government. Especially, since we are the little guy. The hopes and futures of many families at Point Baker and elsewhere are now in the hands of this committee. Your careful study and consideration of the issue is our last hope for a responsible resolution of our situation. It is difficult to predict what actions individuals will take should their sole means of support be unjustly taken away. Thank you.

Sen. Bennett,

I am writing you in regards to the present hand trolling situation from an uneasy position as i see no simple solution at hand. The limited entry program has made fisheries management (even though still very complex) by reducing some of the variables. Also & most important, the fish will benefit by eventually attaining an optimum resource level that fluctuates with naturally imposed conditions & not because of mans greed or ignorance. But the program - not by intention but because of design - is going to make the choice of a fishing way of life almost impossible for many of Alaska's young or future young people. To even hope to attain a permit, that is on a limited basis ranging in price from thousands to hundreds of thousands of dollars, one must be able join the fishing community at an entry level. This at least holds the possibility that with hard work, a bit of luck & a lot of paying attention one may be able to eventually scrape together the money required to begin fishing with a limited permit. By cutting the line limit from four in half hand trolling will cease to be an avenue toward this goal as a person will not be able to make the move because of economies. You have to eat & stay warm before money can be put into savings & there wont be enough. So i have a suggestion and also a question.

First - would it be possible to maintain hand trolling at an entry level & also make it a source of economic possibility by breaking it

into two catigories

1) Four hand gurdies with a limited permit required (owned by the state & given to a indivisual for use that meets certain developed requirements such as need, economic dependence & tradition tempered of course with common sense, upon non use the permit would go back to the state & be reissued acording to developed guidelines — no personal ownership would alleviate the money market trading & speculation we see with present limited entry permits) & ADDITIONALLY;

2) Two gurdies or two poles maintained at entry level so all paths to a fishing way of life are not closed.

Secondly the question

Would it be possible for the State to do something about the present high prices of limited entry permits? The State created a system of personal ownership of the right to harvest a public resource & because of the resulting permit prices many people will not be able to participate in this way of life unless they come from a fishing family (that presently owns permits) or have access to large amounts of money. It may be the States responsibility to use some of its "new money" alleviate this discriminitory situation.

I want to thank you for taking the time to read this letter & am looking forward to your reply. I have lived in Alaska for four years and am presently hand trolling. I love the fishing way of life & at 32 years of age will make it my way of living regardless of restrictions or permit prices, but i hate to see the door slamed shut in front of other young Alaskans.

Thank You

Chris Sharpsteen
P.O 1255
Petersburg, Alaska
99833

TO: Senator Don Bennett, Chairman
Administrative Regulation Review Committee

FROM: Sue Lowell

DATE: March 25, 1980

RE: Commissioner Skoog's letter of March 13.

For your information, the following is a summary of Commissioner Skoog's letter of March 13, constituting the Department of Fish and Game's comments regarding the troll fishery regulation for 1980.

With reference to the Administrative Regulation Review Committee's March 4 hearing, the Department feels that the Committee heard adverse testimony from handtrollers,who are both "professional" and in the minority, to the proposed regulations regarding the two line limit concept, which they believe decreases their efficiency. The Department states that the existing limitation is already two gurdies for hand trollers, and up to four poles for those involved in rod and reel fishing.

In Department hearings last fall, the hand troll fleet did not express the above concern; instead, they opted out for a greater number of permits, rather than increasing their efficiency. The Board of Fisheries expressed their interest in managing the troll fishery by limiting the number of potential hand trollers who would enter the fishery to between 500 and 600.

The Department feels that the hand troll fleet has increased their efficiency in recent years without the use of four gurdies. This has been done so they say, through the use of larger and faster vessels and hand gurdy gear. I just can't believe this statement Don, because the average Alaskan resident who is involved in the hand troll fishery does not own one of these larger and faster boats. But, instead he is usually rural oriented individual with an average boat size of about 18 feet. This information was derived from discussing the problem with several village hand troll association people. The hand trollers that are making out like bandits are the out-of-state fishermen with the big boats that are also rigged to engage in other types of fishing.

To return to the Department's feelings, they also believe that it was the handtrollers with the above type of vessel that testified at our last hearing. I again cannot believe this. Further, the Department feels that if the Committee should vote to reverse part of the regulations, that this would cause serious fishery management problems. In essence Don, they warned you that the North Pacific Fishery Management Council, the Secretary of the Interior, and courts would work against Alaska's fishery if the Committee decided to further increase the hand trollers efficiency. It is my opinion, that I am inclined to cast a more jaded eye at the Department of Fish and Game than I am with the above groups they mentioned.

3/21/80

Dear Sir,

I understand from talking to Lt. Gov. Terry Miller you are holding meetings now in Juneau on hand trolling. I have been trolling salmon and halibut fishing for 5 years. When I started I could fish halibut from May to September. I could fish salmon with four lines all summer - in inside or outside waters. Last year halibut ~~was~~ fishing was open three weeks. This year it may be shorter. This year my troll gear is cut in half, while the cost of fuel may be double befor the season is over. Canneries

are saying the price of fish will be down, Give me a chance to ~~let~~ make a living - let me fish four line. The ~~ma~~ majority of hand trollers are Alaskans - how about Alaska for Alaskans.

Send me any ~~form~~ information on hand trolling meetings you have. What can I do to get my other two lines back in the water.

Dennis Harvey
Box 554
Petersburg Alaska
99833

TO: Senator Bennett

FROM: Sue Lowell

RE: Handtroll Regulations

DATE: March 19, 1980

Bob Anderson, Chairman of the Yakutat Advisory Committee called to express his support, representing the Committee, to the Board of Fisheries action taken at their December meeting regarding the regulations adopted to go into effect this fishing season.

They held a recent meeting in Yakutat, out of which the following groups joined in support of the Board of Fisheries proposals:

Alaska Native Brotherhood
Village Corporation of Yakutat
City of Yakutat
Yakutat Fishery Advisory Committee

March 12, 1980

Members of the Regulatory Review Committee:

My name is Alice Barton. I have a halibut longline permit and I crew for my husband when we fish gillnet, longline, crabpots, jigging machines, as well as handtrolling. I am secretary for the United Southeast Alaska Gillnetters.

Although our organization usually is working to have the Board of Fish review and change regulations, we now find ourselves defending their position and decisions. Jim Eaton and Greg Cook offered excellent testimony at your public hearing. The Boards decisions on handtrolling are based on extensive and exhaustive research and many, many hours of public hearings. It did not make their decision any easier; it only served to make them more aware of the fact that <u>any</u> decision would be unpopular. The Department of Fish and Game also presented evidence of the statistical decline of coho and increase of handtroll effort.

Three years ago, when Limited Entry was first seriously considered, handtrollers turned out in force at public hearings to cry, "Don't limit our numbers; just give us gear and area restrictions!" Last year, the number of permits was not restricted and there were time and area closures. The fish stocks still suffered because there was still too much gear in the water.

Now, this year a limit has been put on the permits; if you didn't have one last year, you don't get one this year. The limit in numbers of permits and area closures would only maintain the level of last year's effort. To decrease the handtroll take of fish, a gear restriction is necessary. All other gear types are restricted already.

There was much public testimony to the effect that a handtroller could not make a good living at it last year. This should tell them something:

There are not enough troll fish to be caught to support 2100 hand-trollers!

I urge you to consider the effort and testimony that has gone into the Fish Board's decision. While I am glad that any group can have final appeal with the legislature, I think it is important to be careful of undermining the effectiveness of any State Board.

Sincerely,

Alice Bartoo
Secty, U.S.A.G.
Box 847
Juneau, AK 99802

Attached please find 3 information sheets. I made the graphs from ADF&G statistics — AB

(11/14/79--SOURCE: ADF&G)

SOUTHEASTERN HAND AND POWER TROLL CATCH IN NUMBERS OF COHO SALMON, 1975-1979.

(1978 and 1979 data is preliminary)

	HAND TROLL					POWER TROLL				
District	1975	1976	1977	1978	1979	1975	1976	1977	1978	1979
101 1/	18,153	12,247	11,840	49,121	10,441	52,222	39,967	54,313	88,479	37,944
102	1,591	1,059	4,818	11,785	19,066	9,305	7,944	10,588	13,554	18,643
103	6,510	11,341	14,118	33,473	52,770	23,129	52,491	22,320	20,107	25,668
104 2/	530	192	1,197	424	2,302	29,283	14,020	17,854	50,943	63,951
105	526	1,853	52	9,702	9,583	8,502	6,853	1,512	6,163	5,279
106	2,735	4,568	3,773	12,552	5,932	4,944	7,402	3,965	5,874	3,155
107	379	530	598	3,991	383	557	1,501	1,880	1,559	233
108 2/	0	202	142	1,774	94	0	57	447	180	11
109	2,081	7,398	16,288	21,116	62,492	7,007	22,069	23,691	21,068	39,260
110	259	1,042	2,001	1,523	3,272	2,004	4,225	5,930	7,287	3,210
111 3/	3,679	7,092	11,271	14,089	981*	2,548	1,478	2,987	1,396	2
112 1/	50	3,737	16,317	33,408	8,249	43	2,347	4,839	4,917	987
113	1,293	13,326	13,086	37,753	32,374	12,677	120,136	64,322	233,495	100,392
114 1/	2,709	19,970	45,975	119,985	13,557	10,932	52,297	50,360	67,530	4,203
115 1/	0	213	3,888	3,097	367	0	1,598	6,318	1,296	152
116 1/	454	3,633	7,563	3,844	21	2,583	47,931	68,269	50,358	63,940
150	0	0	0	0	0	0	859	0	0	321
152 4/	0	0	0	9	2	16	32	0	695	79,190
154 4/	0	0	0	5,547	528	0	4,454	231	66,923	162,497
157	55	291	100	12	0	7,134	47,857	6,013	12,538	16,424
181 4/	0	0	1,999	14,628	316	120	117	1,811	26,929	2,227
183	10	39	668	3,995	4,638	140	193	554	1,455	24
186	0	0	0	602	3,286	0	0	0	163	25
189	0	0	0	100	0	0	160	2,778	21,748	9,510
TOTAL	41,014	88,733	155,694	382,530	230,654	173,146	435,988	351,114	704,657	636,254

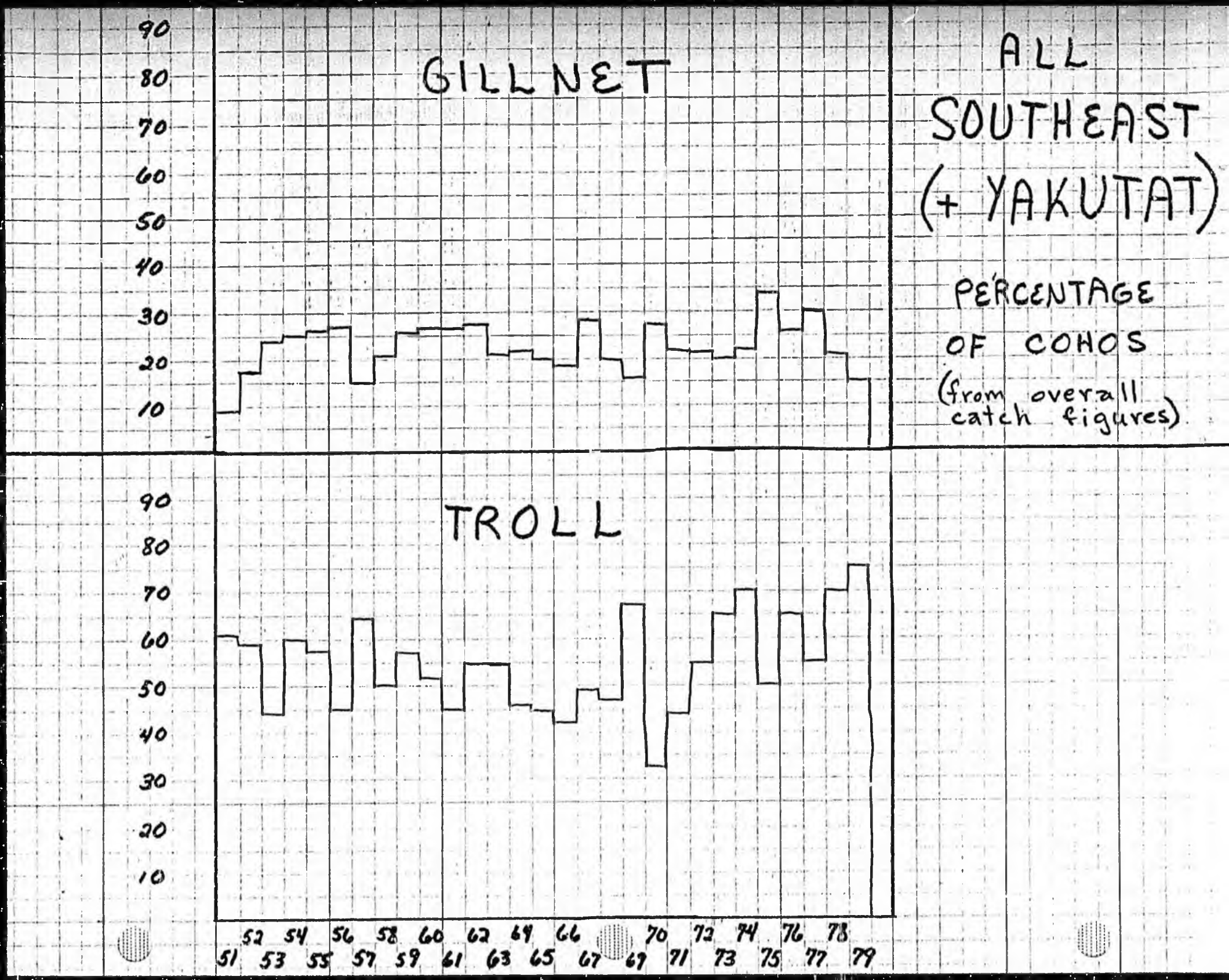
50318 gillnet

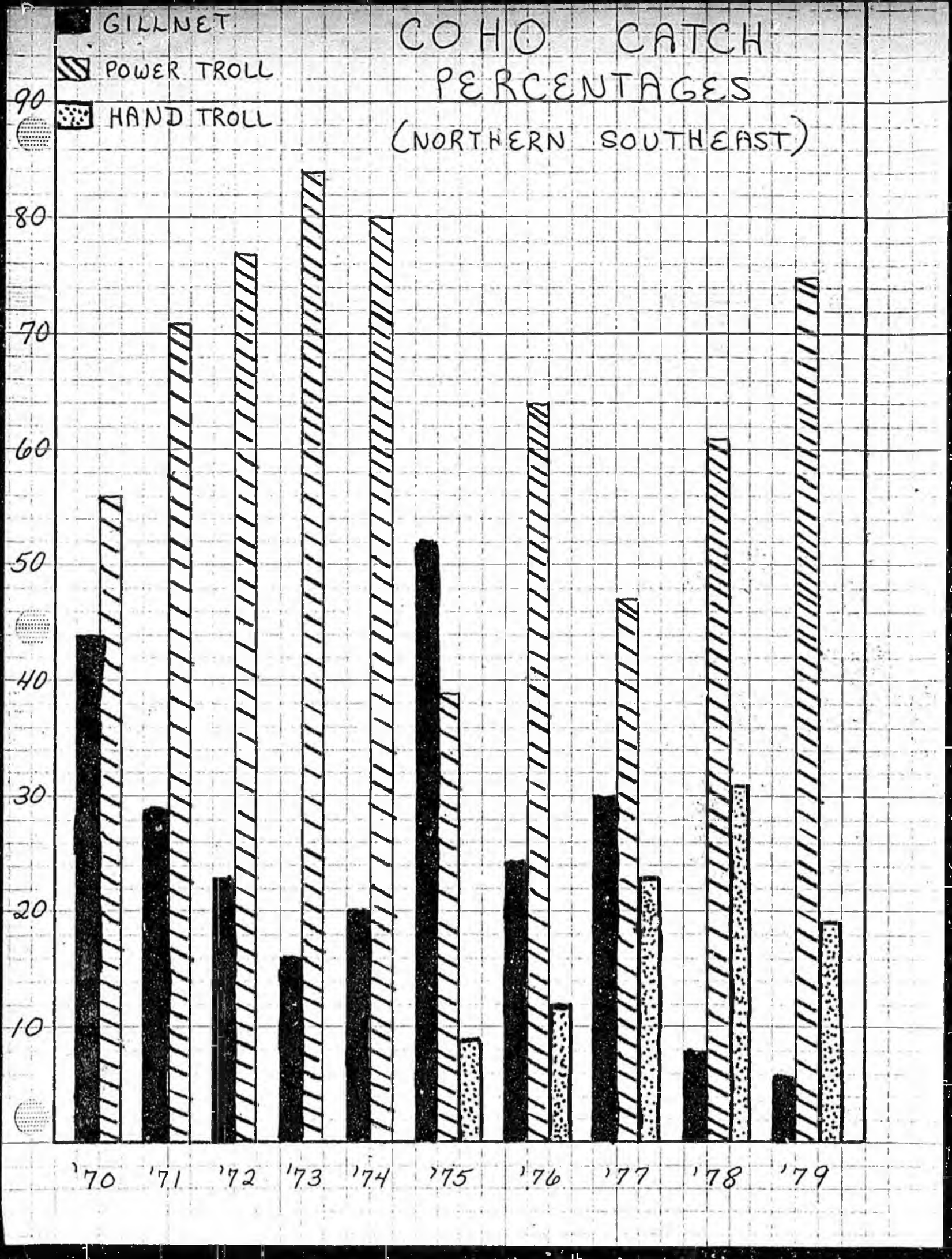
1/ These districts were subject to the 8-on/6-off closures during the 1979 season.

2/ During the 1979 season this district was open to trolling only during drift gill net openings.

3/ The hand troll catch in this district includes derby catch.

4/ Hand troll catch shown for 1978 and 1979 is probably in error since the outside coastline fishery has been closed to hand trolling.


GILLNET
TROLL
ALL SOUTHEAST (+ YAKUTAT)
PERCENTAGE OF COHOS
(from overall catch figures)
90
80
70
60
50
40
30
20
10
51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79


GILLNET
POWER TROLL
HAND TROLL
COHO CATCH PERCENTAGES
(NORTHERN SOUTHEAST)
90
80
70
60
50
40
30
20
10
'70
'71
'72
'73
'74
'75
'76
'77
'78
'79

March 8, 1980

Fisheries Regulation Review Board
Pouch D
Juneau, Alaska 99801

Dear sirs:

Enclosed you will find a copy of the minutes of the latest meeting of our area advisory Committee to the Department of Fish and Game.

You may find the entire minutes of interest, but I have been instructed by the Committee to draw your attention to our position which is strongly opposed to the two line limit, 80%-20% allocation of the resource affecting handtrollers.

We strongly feel that the present restrictions have come very close to making it economically impossible to make a living handtrolling and in addition make it impossible for a person to accumulate capital to enable a person to move up in the fisheries, either as a young person just able to start fishing or someone who wishes to start out in the industry.

We strongly urge that you exert all power at your disposal and every aveune open to you to end these discrimations and restrictions.

We realize that in some areas there are problems, but we feel the present restrictions are not designed to solve the problems, but will only serve to destroy the handtroll fleet as a viable fishery in the rural areas.

Sincerely,

Arden Fritz

Arden Fritz
Box 29
Hydaburg, Alaska 99922

March 8, 1980

MINUTES OF THE MEETING OF THE HYDABURG AREA ADVISORY COMMITTEE OF THE ALASKA DEPARTMENT OF FISH AND GAME. March 7, 1980.

The meeting was held in the Council Chambers of the Hydaburg Municipal Building. The meeting was called to order at 7:00 pm by Chariman Victor Burgess. Members present: Victor Burgess, Mitchell Carle and Don Natkong. Absent: Warren Peele and Claude Morrison. Others Present: Robert Price, Albert Natkong, Brady Edenshaw, Jr., Adrian Le Cornu, Robert Sanderson, Jan Burgess, John Morris.

The first order of business was to expand the committee from the present five members. Warren Peele has asked that his name be removed from the committee roster and Claude Morrison has sold his seine permit and will now be powertrolling. Submitted for approval with user group or organization represented:

John Morris - City of Hydaburg, Mayor
Albert Natkong - Longline - Bottomfishery
Robert Price - Handtroll
Brady Edenshaw, Jr. - Handtroll
Adrian Le Cornu - Subsistence
Arden Fritz - Longline - Bottomfishery
Robert Sanderson - Haida Seafoods
Viola Burgess - Subsistence

With these additions the Committee will have twelve members. Until notified otherwise the committee will proceed considering the above named persons as members in full standing.

The Committee then discused various issues presently having an impact on the fishing industry in our area.

On a motion by John Morris and seconded by Robert Sanderson, the committee voted to strongly support the following regulations being considered by the Board of Fisheries: 5AAC 31-125 concerned with shrimp fishing; 5AAC 34-125 concerned with King Crab fishing; and 5AAC 38-135 concerned with Abolone fishing. The reasoning of the Committee is that because these are limited resources in this area restriction is necessary to keep large operators from wiping out the resource in one season. The vote was unanimous.

There was discussion of the Lee Wang Zin oil spill with questions asked concerning lack of effort to clean up the Westside of Prince of Wales Island and particularily the Barrier Islands which have been hard hit by the oil. Oil has been sighted as far North as Reef Point near View Cove on Dall Island. The Committee would like a response from the Department.

The Committee wishes to go on record as strongly opposing current legislation which would remove the fifty-eight foot limit on seine boats and allowing the use of siene drums. In view of the necessity to allocate the resourse now, between various fisheries and the limited number of hours of fishing per week of the present seing fleet, it would appear to be extremely unwise to increase the amount and effieiency of the gear at this time. Efforts should in fact be made to reduce gear. Motion was made by Robert Sanderson and seconded by Adrian Le Cornu. Motion carried unanimously. In addition the Chairman will notify our legislaturers of this position in the next three days.

(Minutes: March 8, Hydaburg Advisory Committee, Cont'd)

The Committee also wishes to go on record as opposing the present regulation which limits handtrollers to two lines and by consensus agreement requests the Secretary to noitify the Review Board (which is currently hearing testimony) of this position. This was by consensus agreement.

Also by consensus agreement, the Committee urges from a strenuously held position, that should limited entry in the handtroll fishery become reality and a point system be established to determine who will participate; that several extra points be given to those whose domicile is in rural areas and villages so as not to repeat the disaster of the powertroll allocation in which some villages ended up with only three or four permits. The Committee also discussed the fact that contrary to testimony by department personal, this area has always opposed limited entry for the handtroll fishery and continues to do so.

The Committee on a motion by Sanderson and seconded by Arden Fritz voted to ask the Board and Department to extend their public hearings to the rural areas so that rural people can have an opportunity for proper input. Hearings currently held in metropolitian areas are dominated by the number of those living in the metro areas who have easy access to the hearing locations, while those in rural areas are limited to one or two persons due to cost of travel.

The Committee also opposes through a motion by Morris and second by Albert Natkong and passed unanimously the current pending legislation which would extend the application time limit on any of the present limited fisheries, except that it be done by a single region; ie, Bristol Bay if that's what that region wants.

Acting on a request from the Hydaburg City Council, Adrian La Cornu was appointed by the chairman to be a member of the Hydaburg Planning and Zoning Commission. This will also make it possible to be closer aligned with the Regional Coastal Management Division.

After hearing a report from James Lockhart who attended the Review Board hearings in Juneau on March 4th, the Committee again reemphasized its opposition to the current policy of greater restrictions on handtrollers, in particular, the present discrimanation of the 80%-20% resource allocation, the two line limit and the restrictions of the three mile limit.

Throughout the meeting the Committee was given pertinent information relative to further efforts in developing the fishing industry in Hydaburg and that as a Committee we need to be actively involved in assuring that proposed regulations and legislation will not be harmful to those efforts.

Respectfully submitted,

Arden Fritz, Sec Pro Tem
Box 29
Hydaburg, Alaska 99922

February 25, 1980
(LETTER OF PETITION)
"RESIDENT 1977 HANDTROLLERS"

BY CERTIFIED MAIL TOO:
GOV. JAY HAMMOND
LIMITED ENTRY COMMISSION
DEPT. OF FISH AND GAME
STATE BOARD OF FISH AND GAME
KETCHIKAN BOARD OF FISH AND GAME

ALASKA STATE LEGISLATURE
ALASKA SEINERS ASSN:
ALASKA POWERTROLLERS ASSN:
KETCHIKAN DAILY NEWS
CITEZINS OF ALASKA

DATE mailed March 14, 1980

Dear Alaskans:

We hereby request immediate action from the State of Alaska, and other authorities controlling Handtrolling in districts 1 & 2 Southeast Alaska to immediately revoke the 8 days on and 6 days off regulation enforced on us last year, the closure to not apply to Handtroll permits who fished prior to "78 & 79". The State of Alaska fisherey authorities are negligent and discriminating to old Handtrollers who have traditionally fished the newly closed areas, and we feel that we are being unduly penalized, because the State did not have limitations on number of Handtroll permits in effect by "1977"(considered the breaking point) and kept selling thousands of permits, which has led to this deplorable situation. This must be enacted immediately and in effect for the 1980 season so we can financially stay in the fishing industry. Soaring inflation, high fuel prices etc. now restrict us more than ever to fish these areas that we have previsously fished, restrictions like this figure 50% off a normal fishing season. We cannot wait while the State burocarcy is floundering and we are being unduly penalized for their negligence. The State fishery authorities imposed the closures due to excess % of Handtroll fish caught by thousands of excess Handtroll permits sold by the State in "1978 & 1979". So an immediate moritorium must beheld from that date concering the closures and not restrict the estabilished Handtroll permit holders prior to "1978". We cannot survive another hardship closure such as was imposed on us last year. Untill the limited Entry Handtroll situation is equitably resolved and applied-remove the closures now! Which are strangling the Handtrollers who have fished and lived here for years.

We are looking foreward to your earliest attention, acknowledgment, action and answer to this urgent situation.

Your reply is awaited.
"Resident 1977 Handtrollers"
% Don Williams
Box 382
Metlakatla, Alaska (Annette Island
99926

Sincerely,
"Resident 1977 Handtrollers"
Letter of Petition
P.O. Box 5260
Ketchikan, Alaska 99901

Name & Address Metlakatla	H,T, Permit 1970-1977	H.T. Permit Number	STATERES. yes--no	RES. yrs.
D. Williams Sr.	X	S05B19258F	X	55
Timothy J. D. Williams	X	S05B19393H	X	32
Gilbert Booth	X	?	X	47
James Reynolds Sr.	X	?	X	5?
William-N Baines	X	?	Y	31
Frank E. Peterson	X	S05B32547H	X	55
Richard E. Leonard	X	S05B27097C	X	39
Edward R. Littlefield Sr.	X	?	X	32
Gerald G. Samuelson	X	S05B29497U	X	37
Alex Atkinson	X	S05B33102U	X	57
Lawrence Henry	X	S05B15314H	X	52
Thomas A. Arnold	X	S05B33141U	X	27
Frederick Leask	X	?	X	31

February 25, 1980
(LETTER OF PETITION)
"RESIDENT 1977 HANDTROLLERS"

BY CERTIFIED MAIL TOO:
GOV. JAY HAMMOND
LIMITED ENTRY COMMISSION
DEPT. OF FISH AND GAME
STATE BOARD OF FISH AND GAME
KETCHIKAN BOARD OF FISH AND GAME

ALASKA STATE LEGISLATURE
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"Resident 1977 Hand Trollers"
% Don Williams
Box 752
Metlakatla, Alaska (Annette Island)
99926

Sincerely,
"Resident 1977 Handtrollers"
Letter of Petition
P.O. Box 5260
Ketchikan, Alaska 99901

Name & Address Metlakatla	H,T, Permit 1970-1977	H.T. Permit Number	STATERES. yes-no	RES. yrs.
EDWARD F. CHARLIES	X	S05B17562E	✓	28
Lorin Wolpert	X	S05B17541N	✓	32
Edward Ryan Sr	X	S05B21872P	✓	56
Edward S Wilson	X	?	X	45
Bill Wilson	X	?	X	72
(illegible)	X	S05B37215W	✓	32
Simon W. Wilson Sr	X	S05B16752W	✓	39
Allan Arnett Sr.	X	?	X	50
Frank Wilson Jr.	X	?	X	40

(LETTER OF PETITION)
"RESIDENT 1977 HANDTROLLERS"

BY CERTIFIED MAIL TOO:
GOV. JAY HAMMOND
LIMITED ENTRY COMMISSION
DEPT. OF FISH AND GAME
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Box 382
Metlakatla, Alaska (Annette Island
99926

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Ketchikan, Alaska 99901

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Don Williams Sr.	X	S Ø5B19258F	X	55
Kenneth J. Williams	X	S Ø5 B19393 H	X	32
Albert Bates	X	?	X	47
James Leonard Sr.	X	?	X	52
William N Baines	X	?	Y	31
Frank Paul Peterson	X	S05B32547H	X	55
Richard E. Leonard	X	S05B27097C	X	39
Edward L. Littlefield Sr.	X	?	X	32
Cecil G. Samuelson	X	S Ø5 B29407U	X	37
Alex Atkinson	X	S05B23402L	X	52
Raymond Henry	X	S Ø5B15-314H	X	52
[illegible]	X	S05B33467K	X	27

(LETTER OF PETITION)
"RESIDENT 1977 HANDTROLLERS"

BY CERTIFIED MAIL TOO:
GOV. JAY HAMMOND
LIMITED ENTRY COMMISSION
DEPT. OF FISH AND GAME
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Louis Wagner	X	S05B1754 1N	✓	[illegible]
Conrad Ryan Sr	X	S[illegible]B2187[illegible]P	✓	56
Edward S Luthi	X	?	X	45
Bud Collins	X	?	X	32
Glenn H Tibbetts	X	S05B3721SW	✓	30
Samuel W. Luthi Jr	X	S[illegible] 5B167524	✓	39
Allan Everett Sr.	X	?	X	50
Thomas E Wilson Jr.	X	?	X	40

March 8, 1980

Fisheries Regulation Review Board
Pouch D
Juneau, Alaska 99801

Dear sirs:

Enclosed you will find a copy of the minutes of the latest meeting of our area advisory Committee to the Department of Fish and Game.

You may find the entire minutes of interest, but I have been instructed by the Committee to draw your attention to our position which is strongly opposed to the two line limit, 80%-20% allocation of the resource affecting handtrollers.

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Respectfully submitted,

Arden Fritz, Sec Pro Tem
Box 29
Hydaburg, Alaska 99922

MEMO 3/13/80

TO: Senator Don Bennett, Chairman
Administrative Regulation Review Committee

FROM: Sue Lowell

Jimmie Huntington called in response to the Committee's notification on the Handtrolling Hearings that were held on March 4. He has just returned from trapping and was not aware of the meeting until returning back home.

Jimmie related that he was not in favor of the handtroll regulations as they were set. He feels that the power trollers are the group receiving all the benefits and the village people (mostly involved in handtrolling) were being infringed upon by these regulations. He related he will continue to be in opposition of these. Jimmie also feels that Jim Beaton and Gregg Cook are prejudicial against handtrollers.

He wanted you to know he is always available for input to the committee by phone, on matters relating to fish and game.

Rural Route 5, Box 5665
Juneau, Alaska 99803
March 11, 1980

Senator Don Bennett, Chairman
Administrative Regulation Review Committee
Alaska State Senate
Pouch V
Juneau, Alaska 99811

Dear Senator Bennett:

On March 4, 1980, I testified before the above committee in support of the recently adopted salmon troll regulations for Southeastern Alaska, citing over-harvests, inadequate escapements, endangered fish stocks, and a deteriorating sport fishery. My testimony was based on newspaper accounts of sport and commercial fishing activity (or inactivity), on information provided by the Fisheries Board and the Department of Fish and Game, and, above all, on my experiences and observations as a sport fisherman here in the Juneau area for over a quarter-century.

Now that I have had an opportunity to reflect on the testimony of others and to examine further the Fish and Game's statistics on the Southeastern Alaska commercial salmon fishery, I wish to reiterate most strongly my support for the gear reductions and other management steps set forth in these regulations. I also believe that the number of persons engaged in the hand troll fishery must be sharply reduced and tightly controlled. A limited entry fishery seems essential to protect the resource and ensure its equitable distribution among various user groups. Although I admired the handtrollers for showing up in such numbers to express their views and for expressing them so vigorously, I disagreed with most of what they said. In fact, the tenor of their remarks helped me to understand why Fisheries Board member Jim Beaton has spoken of "the apparently insatiable appetite that appears to be developing among handtrollers" (Southeast Alaska Empire, 12/21/78).

When, in my testimony, I said that a great many of those present did not seem to be hearing the message, I meant, of course, the message from the Fisheries Board and the Department of Fish and Game that the resource is endangered. We are all concerned about the same thing: fish. We must all protect this invaluable resource. Conservation is essential. We share the bounty; we must also share the pain of inescapable management decisions. What any one user group does affects all the others. Sometimes the results are immediately observable (as in my example of what happened when the herring fleet was allowed to come right in on a prime local sportfishing beach) and sometimes the effects, the warning signs, take a while to show up. Now, after five years of runaway growth in the handtroll fishery, the signs are everywhere. I didn't need the Fish and Game statistics to tell me the coho are threatened. For the past five years I have seen a most troubling decline in the number of spawning coho in several streams I have fished for many years. As for the over-all local sport fish picture, it has become increasingly dismal. What's happening on the outside is affecting us on the inside, and very badly.

In this reource area, as in many others, the Legislature has much to answer for. Here's a chance to redress the balance or at least make a start. Protect this resource by supporting these regulations.

Sincerely yours,

William Philip Dunn

William Philip Dunn

MY NAME IS JOE H. SATKO AND I SUBMIT THE FOLLOWING REGARDING THE HANDTROLLERS REGULATIONS FOR SOUTHEAST ALASKA.

I have been handtrolling for over 20 years and do not make my living at it. Also feel it would be impossible to on the short season, plus the open and closures. The time we handtrollers are unable to fish because of the weather. The weather is more of a factor now than ever for us in the Juneau area as the fishing grounds that we have fished for years are now closed to us (handtrollers). We now have to go to at least the Chatham Straits and Icey Straits to fish which increases our fuel consumption more than double, and the price of fuel has more than doubled. Then we are trying to learn new fishing grounds, then the season closes and we have to come back home and more fuel is wasted, unless we lay at anchor for six days.

Because we were being moved out of our fishing grounds I bought a new boat with twin engines in order to move with the change in regulations, and with gear have invested approximately $40,000.00. With my old boat I just did not feel safe in running to the waters that were open for me t o fish in. Now the Board wants to further restrict us to two gurdies or four poles.

This coming after the short season and the 8 day on and 6 day off season. With the open season on the big tides when fishing is generally poor. Plus the restricted areas, it seem to me the Dept. of Fish & Game are trying and succeeding I might add in eliminating the handtroller completely. When I refer to handtroller I mean those that use poles, gurdies and hand lines or any other means but power to bring in their fish.

I suggest that should the Dept. feel that these further restrictions are fair and proper then their salary should be cut to about 20% of what other state employees of same scale are making. They are saying that a much expanded fleet should still (if they are anywhere near right be limited to take only 20% of the troll fish). A clear reduction in earning for anyone that has fished for any length of time. I don't believe that the allotment of the fish is a proper function of the Dept. of Fish & Game. Further should the House and/or Senate condone this action, it is my belief that both Houses should pass legislation to refund to the people (taxpayers) of Alaska all monies spent for administration, management and any other functions of the Fisheries as they were for a special interest group and not the best interest of the people (taxpayer) as a whole.

Another note on the 80/20% - if the Fish & Game were interested in being anywhere near fair they would take into consideration the number of gill net and some seine boats with HT Permits. Boats that do not and have not handtrolled. But they have HT Permits to sell their fish caught by other means as troll fish. There are some of these boats that have and are handtrolling. Most do not. But they do inflate the number of permits and percent of fish supposedly caught by handtroll fishermen. I read a new account by the Dept. last year discounting the practice as minimal. I reject that. Last Sept. (1979) while anchored in Taku Harbor, I could not believe how many gill netters W/HT signs on. Having fished every open season for handtroll (troll) for some years, and never seeing any of the boats that were in Taku ever on the grounds. One gill netter told me in the presence of one other person, that he had the license for one thing only, so he could sell gill net kings and cohos as troll fish. He did not have any troll gear of any kind. (handtroll or power troll.

In conclusion if a percent of fish are to be allotted to groups, then the Dept. should at least check to see that one group is not getting unfair treatment over the other. Lastly we handtrollers do realize that the Dept. (the one we support with our taxes and have even before we started fishing) is dedicated to our extinction as has become quite obvious these past few years. Again I must say that I don't feel that a proper function of the Dept. to decide that certain fishermen should become wealthy and others should lose their shirts. I believe a fairer way would be to allow all groups to fish when the runs are good. When the runs are low as to jeopardize the runs then close all fishing until they improve.

Further in Juneau and other likewise communities to say one makes his or her living on handtrolling is a joke. Maybe they would be willing to produce IRS records - welfare - foodstamps - records, etc. I do not believe it. My IRS and any other records are available for inspection when and if a fair system is instituted. Including cost of boat gear, etc. and maintenance and anything else needed.

March 13, 1980

Senator Don Bennett
Legislative Review Committee
State Senate
Juneau, Alaska

Dear Senator Bennett;

This has reference to your public hearing regarding complaints about the Board of Fisherys regulatory measures against the Hand Troll Fishery.

I am the first to agree and have been very vocal, that they have in fact, treated us unfairly, but in this instance I have grave fears that many of them are minor relative to what you may do in the light of testimony you heard the other night.

Specifically, the main thrust of it was directed to the 80/20 allocation and the gear cut to two lines. I said grave concern in the preceeding para because if your committee tampers with these two items, we will have chaos in the Hand Troll Fishery::::::::::::

To explain that statement I need to go into depth, so here it is.

The Board of Fisherys has for the past three years, been very concerned about the rapid growth of the Hand Troll fleet. To the extent that they directed the limited entry commission to put this fishery into limited entry and said "we will accept a maximum of 500 permits". The reasoning being, according to boat landings, that many boats could land 20% of the cohoe troll catch. Without going into detail of whether that allocation is a fair figure or not, the point is that there is a direct relationship to effort vs catch. Since 1975 when power troll went under limited entry, we have seen a new breed of hand troller arise. He is the big boat, 4 lines, 12 to 18 hour per day fisherman. Had limited entry not been in, he would have been a power troller. Since he cannot, he hand trolls. This is not the historical, typical hand troll fisherman. This is the type that swells the catch data ·taining to hand troll and given an allocation without gear restiction, would

mean that quota would be reached far sooner than had it been done by Historical gear. Since we are looking at about 2000 annual participants of which the p[r]ofessional constitutes about 4 to 500, we obviously have a problem.

In 1979, the Limited Entry Commission undertook a survey to determine what kind of a fishery the hand trollers wanted. I am attaching their results and conclusions as it more aptly describes the situation. In sum it says that contrary to the boards position of 5 or 600 permits, they recommend 2150 with restrictions and that it be treated as a low income, low keyed fishery, thus enabling the majority of existing users to obtain permits.

With this in mind, we thru Rep. Duncan, have introduced a Limited Entry Hand Troll Bill (HB 350). The contents have been derived from many meetings and idea exchanges with various Associations and individuals thru out South East Alaska. It is by no means a 100% concurrence but it is the best we could come up with to fit the majority.

It is different in that we propose a non transferability clause (non Sale), that the Commission issue and reissue, that it would accomodate new entry within a 3 or 4 year maximum time.

Now getting back to the chaos statement. Outside of the professional group, we have majority support for this Bill as it accomodates most everyone, Professionals included. It was approved based on that 2150 number, and the contents therein. If your Committee were to force a change in the allocation or the gear cut, then the Commission could not support that number because of the built in criteria that it was based upon. Thus it would be revised downward to X degree. If this were to occur then the Handtrollers could not support the Bill and it will die.

The Remaining alternatives would then be:

1. Hand Troll would go under existing Law. Freely transferable permits will mean an outward migration of permits from rural areas. Prices will become so [h]igh that the historical user will not be able to afford the permit. Also the

500 permit number would probably become a reality in which case the permits will go to those whose historys have been high volume production (ieProfessional Hand Troll) rather than to the rural areas whose equipment and way of life, precludes the ability to compete, thus villagers will be left out of the 500 number to a great degree. OR

2. There will be no limited entry for Hand Troll. The resultant regulatory measures would be so drastic that there would be no point in having a Hand Troll Fishery. This is stated because there are only so many fish to go around. Power Troll, Hand Troll, Gillnet and escapement. With one unregulated Fishery amongst the regulated, it would not work.

So please, do not tamper with the allocation and gear cut at this time. Two years down the road with experience under our belt, changes in the Boards attitude will be in order if they still adhere to unfair policys.

Chuck Porter

Member of Juneau Hand Troll Assoc.

HAND TROLL PRESENTATION TO THE BOARD OF FISHERIES
1979

The Commission appreciates the opportunity to be here today. Our purpose is to discuss with you the complex problem of managing the hand troll fishery. This particular fishery highlights the necessity of the Commission, the Board, and the Department coordinating management policies. We appreciate the recommendations received from the Board in the past regarding limitation of this fishery and other fisheries; and hope that our recommendations to the Board will be accepted in the same vein.

To summarize quickly, when the majority of the salmon fisheries were brought under entry limitation, the hand troll fishery was specifically segregated from power troll and left open to entry. From 1975 to 1978, the number of active hand trollers increased annually -- 1,094 in 1975, 1,237 in 1976, 1,849 in 1977, and 2,604 in 1978. Through those same years, the hand troll share of the troll fishery harvest has increased from 13% to 28%, measured by poundage. The preliminary data for 1979 shows that approximately 25% of the total troll harvest was taken by hand trollers.

During the spring of 1973, the Commission held several joint hearings with the Board in Southeastern communities regarding the hand troll fishery. Public comment at that time was generally opposed to limitation. In the 1978 season, the Board began a series of management measures to try to ensure a historical allocation of the troll catch, beginning with closing all outside waters to hand trolling. Despite the closure, the hand troll portion of the troll catch increased sharply. Consequently, for 1979, the Board further restricted hand troll effort by adding a series of closures in inside waters in an attempt to implement a tacit policy of an 80/20 split of the coho troll catch.

At the December, 1978 Board meeting, the Commission announced that it intended to propose limitation of the fishery in 1979. On September 14, after receiving management recommendations from the Department of Fish and Game, the Commission proposed limitation of the hand troll fishery, beginning in 1980, with a maximum number of 1,100. That proposal was advanced on September 21, 1979. Eight public hearings were held by the Commission with the public comment period closing on November 9, 1979.

At the time the Commission advanced the proposed regulation, we had received recommendations from the Board and the Department of Fish and Game. The Board recommended a maximum number of no greater than 600, by which you indicated to us a desire to significantly decrease the size of the fleet, so that the professional hand trollers that remained could be subject to the same management policies as applied to power trollers, and still not harvest more than 20% of the troll catch. The Department stated that the maximum number should not exceed 1,000 to avoid the necessity of excessive regulation to maintain historical harvest balances. The Department referenced expected efficiency gains in the fleet after limitation, a concern also raised by you in your recommendation.

The Commission proposed maximum number of 1,100 was chosen based upon the input from the Board and Department, plus the Commission's own research. Our intent was to use the fishing seasons from 1975 forward as the predominate indicators of hardship when the hand troll fishery was limited. As a practical matter, the Commission cannot use maximum numbers outside the boundaries of participation established during the most recent years. Thus, we chose the smallest effort level in recent years as our proposal.

Attached to your copies of this presentation is a summary of the public input received by the Commission during the public comment period. It seems quite apparent to us that the news release issued by the Board shortly before the first Commission public hearing greatly influenced the testimony. Prior to the news release, many viewed entry limitation as a mechanism for removing some of the restrictions imposed in the recent past. After the news release, many people testified that if limitation of the fishery would not ease management restrictions, they would prefer that it be left open to entry. Most comments we received favored removal of the restrictions plus an increase in the proposed maximum number, which would exacerbate the management problems you face today.

The Commission has now evaluated all comments and data available at this time. It is very apparent that no simple answer exists which will satisfy the management concerns of the Board, the Department, and ourselves; and at

the same time satisfy the wishes and desires of the Southeastern hand trollers. The very best that can be accomplished in the near future is to prevent the situation from becoming more complicated. We want everyone to understand that the Commission does not have a solution that will be all things for all people. It is our wish, though, to undertake a beginning in what will by necessity be an involved system of slowly working toward a fair and practical management framework. A reasonable result can only be achieved with full agreement between the Board and the Commission, close coordination of our respective regulatory powers, and with the understanding of hand trollers, power trollers, gillnetters, and seiners.

With that prelude, we come before you today to ask for your cooperation in the implementation of a management strategy for the hand troll fishery. After evaluating the management problems and hearing the desires of the fishermen, we cannot agree that your management plan to drastically reduce the size of the fleet and allow full development of highly efficient hand troll operations is the best solution. Instead, it is our proposal to work toward a different goal - that is, to maintain the historical character of the hand troll fishery while at the same time providing for a professional fishery. Hand trolling has been a small scale, low investment, low return fishery generally attracting participants who either utilize the fishery to sustain a particular lifestyle, or as a fishing outlet for young and older residents of Southeast and others who depend upon the bulk of their income from land-based occupations.

The fishery has generally been referred to as an entry level fishery. The distinguishing characteristic of this fishery is the prohibition of mechanical assistance other than hand power to place and retrieve gear. The definition of such a fishery suggests a special circumstance, particularly in the present environment of highly automated commercial fishing operations. We believe the special circumstance to be very indicative of the essence of this fishery. It is in fact a fishery purposefully defined as a low-cost, relatively low-return fishery tailored to social desires of those people who have historically partaken of the opportunities it presents. We must assume that those who have developed hand troll operations nearly as efficient as

power trollers have done so because of power troll limitation, or through reinvestment of hard-earned income from hand trolling in the past for the purpose of maximizing the benefits to be accrued in the future. Without some efforts at this time to prevent further efficiency increases, history tells us that limitation of the fishery will almost force those permits that remain to maximize their efficiency within the regulatory framework that dictates their operation. This would in fact seem to be contrary to the Board's statements to the Commission of maximizing the number of permits to be held by residents of rural communities. Rural residents have limited access to wellpaying jobs and mortgageable property. Hence, even if the Commission were to succeed in initially issuing a high percentage of permits to rural residents, those permits would through time tend to migrate to residents of urban communities IF large amounts of capital investment are necessary to remain competitive.

Preliminary analysis does suggest that profits earned in limited fisheries are being reinvested into more efficient operations. That same trend of efficiency increase can be demonstrated in the hand troll fleet. Since 1975, the numbers of permits fished has steadily increased along with the average number of weeks fished and the number of fish caught per week by each active permit holder. Much of this can be attributed to the widespread conversion to hand gurdies, and some must be attributed to the recent entry of more of the larger scale, more aggressive and versatile hand troll operations.

Our proposal is the antithesis of your present management policies. Rather than use regulatory powers to limit the vessel or gear efficiency of the hand troll fleet, time and area closures have been utilized almost exclusively to date. Our suggestion is to combine our respective regulatory powers to limit the efficiency of hand troll operations, through such means as entry limitation, gear restrictions, vessel restrictions, and tying permits to geographic areas; and to use closures as a mechanism for in-season adjustments. Considering the dearth of management data available, it is impossible at this time to identify any particular combination of these restrictions to accomplish a specific goal. Nonetheless, we must begin now to implement some combination of these management restrictions if a profitable, entry level

hand troll fishery is to be maintained and made available to a reasonable number of users.

If you agree to work with us in the development of this management policy, the Board should develop a formal policy, including not only the desired structure of the fishery, but also including a statement of the relationship to the power troll fishery. If you wish to allocate the troll harvest between these two fleets, we need to know what that allocation will be so that we can develop an optimum number analysis. Such a policy will also be a determinant in the establishment of an initial maximum number.

In 1973, the Legislature turned down a proposal by then Governor Egan to limit fisheries by initially establishing a maximum number which would have been synonymous with the present law definition of optimum number. That amendment to the Egan administration bill must be interpreted as a desire by the Legislature to buy fishermen out of a fishery, rather than to ruthlessly eliminate them without compensation. As if to reiterate that point, they specifically identified three salmon fisheries that were distressed and specified that the initial maximum number was to be equivalent to the largest number of participants in any of the four most recent years prior to enactment of the law. Although they allowed the Commission broad authority in the establishment of maximum numbers in other fisheries, we feel compelled to follow the basic example established at that time.

In the attachments which you have to this presentation, you will find in Table 17 a breakdown of participation since 1975. Considering the particular patterns of participation in this fishery, we believe that a maximum number in the range of 2,000 to 2,400 will allow all hand trollers with present dependence on this fishery ample opportunity to qualify for a permanent permit if the fishery were limited in 1980. Should we resolve to mutually develop a management program including entry limitation for hand trolling, we would propose that range of participants should be considered for management purposes until a reduction can be accomplished either through buy-back or attrition.

This proposal recognizes the necessity of diminishing the original number of permanent permits to an optimum level to minimize the necessity of time and area closures and thus ensure an opportunity to realize reasonable earnings. We do not believe that closures can be eliminated in the near future even if this management proposal is implemented. While we realize that time/area closures are anethema to most of the hand troll fleet, we foresee no mechanism at this time for their elimination -- with the exceptions of Draconian reductions in the number of gear units or removal of allocation guidelines. Without entry limitation, the severity of management restrictions will by necessity be greater.

Reduction from the initial maximum number can be accomplished by two mechanisms. The first is as provided for in present law by using assessments against hand troll gross earnings to purchase permits on the open market. The second would involve some combination of non-transferability and attrition and would require legislative amendment. Such a bill was introduced last year at the request of the Southeast Hand Trollers Association, and has also, been suggested by Governor Hammond as a modification of the Entry Commission's enabling legislation. Limitation of the hand troll fishery in 1980 would not preclude legislative review of this issue because of the timing that would by necessity be followed. The Commission does not yet have access to completed 1978 and '79 participation data. Also, it is not like that a massive fish ticket editing process presently being conducted by Commission staff for the years 1975-78 will be completed before March. Consequently, permanent, transferable permits could not be made available until late in 1980 at the earliest. This would allow the Legislature the entirety of the upcoming session to review the pros and cons of the two distinctly different procedures.

In summary, we are proposing a joint use of Board and Commission regulatory powers to shape the future of the hand troll fishery. Those who would be most adversely impacted by these proposed changes are persons who have invested in relatively large scale operations, capable of high seas fishing and possessing great mobility. It is definitely not our intention to purposefully single out those individuals as the culprits of the hand troll fleet. We would hope that through discussions among the Board, the Commission, and

other interested parties that a mechanism might be developed to "grandfather" those operations that have established themselves as models of the efficient hand troller.

The Commission has met with representatives from the Department of Fish and Game on a number of occasions to discuss the possibilities of implementing a management plan along the lines suggested to you today. While we have mutually agreed in principle to this approach, time constraints precluded us from working on a detailed management proposal to present to you today. It is our hope that you will be able to agree to this approach and to develop an appropriate management regime to accomplish our mutual objective.

Thank you.

Respectfully submitted,

Commercial Fisheries
Entry Commission

December 6, 1979

December 8, 1979

ALASKA BOARD OF FISHERIES

We support a 2,150-permit limited entry program. This program should accommodate mobile, two-line hand trollers. This fishery would have a floating allocation of approximately 20-25 percent. We support a four-line limit on power trollers, except north and west of Cape Spencer outside three miles where a six-line limit will be imposed. We endorse inseason management for both the hand and power troll fishery. Low cost permits within the hand troll fleet are requested.

IN FAVOR	OPPOSED
Sitka Advisory Committee	Point Baker
Yakutat Advisory Committee	Upper Lynn Canal Advisory Committee
for Ketchikan Advisory Committee	Angoon Advisory Committee
Hoonah	
Gastineau Channel Advisory Committee	
Elfin Cove	
Pelican Advisory Committee	

March 10, 1980
Box 3077
Ketchikan, AK
99901

Administrative Regulation and Review Committee
Senator Don Bennett
Representative Oral Freeman
% State Capitol Building
Juneau, Alaska 99801

Members of the Committee

I have spent many hours trying to come up with some simple answers and proposals to present to the committee. I have failed to arrive at a comprehensive solution, but at least I can pass along my thoughts as to the nature and scope of the problems in hopes they may be helpful.

To protect the fishery as a "viable means of support" it must be limited in terms of permits issued. Basically, there are three categories of handtrollers:

1- Professional fishermen, "would be" powertrollers, legitimate businessmen.
2- Subsistence fishermen, native villagers dependent on the fishery, residents of rural communities with limited economic alternatives.
3- Speculators, recreational users and abusers, those who abuse or take advantage of the fishery for tax purposes.

I believe that if an applicant for a permanent entry permit were required to show by means of tax returns a 25% income dependency on handtrolling for any one of the last four years (1976-1979) we would be looking at 1100 permit

instead of 2150. I don't think any legitimate handtrollers would object to this criteria, and the regulatory powers would no longer be faced with the idea of 2150 maximum effort gear units, which is their justification for the stringent, restrictive regulations.

It is unfortunate that we cannot have a wide open, unlimited fishery but indeed we cannot, and those people who are dependent on the fishery for their livelihoods must be given the first and final consideration.

Although the data is 'weak' and inadequate, no one disputes the fact that some of our salmon stocks are in need of additional protection in the form of reduction of harvest levels. Handtrollers are simply insisting that ALL GEAR TYPES SHARE EQUALLY in this responsibility and this has not been the case!!

Perhaps if handtrollers had some representation things would be different, but there are no handtrollers on the Board of Fisheries. Mr. Beaton testified that the handtroll regulations were based in part on the recommendations of local advisory boards. I would like to point out that a powertroller by the name of Ed Linkous virtually controls the Ketchikan Advisory Board and this man is almost totally responsible for the outside closure to handtrollers and God knows what else.

I would like to thank the committee for hearing our grievances and trust that the decisions made will be fair to all. Our future,

our business, our dreams of sustaining a living in the fishing industry, now appear to rest in your hands.

Sincerely,
The Wells family

Doug Hergert
Box 1616
Wrangell, Alaska

Dear Sir,

I've been hand trolling now for about six years for a living. I'm not saying I'm getting rich at it, but I take a certain amount of pride in my work and give a quality product.

This deal about having two sport poles off the back of the boat with two gurdies is a joke. If you got a salmon on the sport pole he would just get tangelled in your gurdie lines. If they cut hand trolling back to two lines I figure thats going to cut off at least 40% of my fish. So much for making a living at it.

I still have faith in the government as most do, but I think the the people should have a little say in there future rather than be dictated to.

The amount of pressure the hand troll fleet has put on the fisheries is blown completely out of proportion. What about the foreign fishing fleets off our shores.

They deal in Hundreds of metric tons. At least the people that live here and fish here are contributing something.

On the subject of the permits going back to the state, I'm totally against this. A fisherman pays good money for that license and anyone that fishes four liners knows you work for your fish. Anybody who has been in the business awhile deserves to do what he wants to with that permit. at least be able to give it to a son or daughter. Girls like to fish too.

Governor Hammond talks about slowing up Government growth. I agree, but this is just another example of it. I do hope you reconsider on a few of these things.

I know quite a few fisherman would have a lot of faith restored back in the system, that is actually good.

Doug Hergert

Southeast Handtroll Assoc.
Box 1303
Sitka, Alaska
99835

The Honorable Don Bennett,

On 3 March 1980 I presented testimony to your committee as Chairman of the Southeast Handtroll Assoc. I would at this time like to reiterate the testimony I presented and expand on some additional areas of testimony.

At times the Board of Fisheries is no more or less than an exercise in politics. As the handtroller was not a political force in 1977, the surfline closure was allowed to get by. In the lawyers opinion to the Secretary of Commerce, the lawyer cited National Standards 4 and the very small catch by the handtroller in the FCZ as the reason the ban on handtrolling should be removed from the FCZ Troll Plan. The Secretary of Commerce concored and removed that portion from the FCZ Troll Plan. Even with the evidence presented by the Dept. of Commerce lawyers, the Board of Fisheries still would not allow the handtroller into the FCZ. Ergo that made the decision by the Board of Fisheries a political decision. Not a biological decision. If there is a biological problem with the salmon stocks in any given area, you do not remove those who catch the least to protect the endangered stocks. The decision to ban handtrolling in the FCZ as a biological decision is ludicrous at best. The same logic applies to all other decisions and regulations that apply to handtroll only. The decision to protect the salmon stocks has to be equally bore by all of those who fish in the problem areas.

The salmon stocks are unique in the sense that they belong to no one yet everone. As a common property resource they must be equally shared by ALL user groups. The board of Fisheries, in their dubious wisdom, decreed that the handtroll fishery will harvest only 20% of the total troll catch of the Coho catch. Again, how do you own a common property resource? As the handtroll fishery was not under the Limited Entry System and the other fisheries were, there appeared a need to curtail the growth of the handtroll fishery. The Board of Fisheries used "time and area" closures as their management tool when the problem actually belonged to the Commercial Fisheries Entry Commission. I would offer this anology. "As you go into your living room, you find that your children are playing with the T.V. set. They are turning the nobs and so on, but you are to busy and ignore the problem. This goes on for a while untill you go into your living room and find all of the neighborhood kids are there, playing with your T.V. set. When you are done screaming and shouting, all of the kids now have their back pockets up around their ears. Who is at fault? You or the kids?" The same rational applies to the handtroll fishery. The handtroll fishery has done no more than they were allowed to do.

When the Board of Fisheries proposed the "two line only" limit on the handtroll fishery, the Southeast Handtroll Assoc. proposed a 4 sport pole-2 gurdy limitation that was adopted by the Board as regulation. The Southeast handtroll Assoc. proposed the 4 sport rod for a traditional sport rod fishery that exists in the inside waters of Southeast Alaska.

The Southeast Handtroll Assoc. accepted the 2-gurdy limitation for several reasons. The C.F.E.C. gave their presentation on the inclusion of the handtroll fishery in the Limited Entry System at the Fall Board Hearings. The C.F.E.C. proposed a high number of handtroll permits (2000-2400) with restricted capabilities. The restrictions were (1) vessel size (2) time-area closures (3) gear restrictions. A special panel created by the Board of Fisheries came up with a 2150 handtroll permit number and a restriction of gear. Namely a "2-line" limitation, which was ammended to a 4 sport rod- 2 gurdy limitation. (1) The Southeast Handtroll Assoc. accepted this limitation under the primus that the regulation was preparing the handtroll fishery for a smooth transitition into the Limited Entry System. (2) The 2-gurdy limitation is commensurate with the traditional handtroll fishery. (3) As the power troll fishery was limited to 4 "lines" south of Cape Spencer, the 2-gurdy limitation allows the two troll fleets a commonly desired approxemately equallity in the number of "lines" used in the commercial fishery.

For several years the high number of issued handtroll permits has caused alarm within the Board of Fisheries. It is neccessary to note here that there is a very high disparity between those permits issued and those that actually fished. In an effort to reduce that high number of issued handtroll permits, the Board of Fisheries apopted a regulation that prohibits sports fishing from a commercially licensed troll vessel. Again the regulation was politically motivated. It was done with the disreguard to the nature of the handtroll fishery As a case in point, I will use my vessel to illiatrate the point. I have a 24' Reinell rigged for handtroll. The vessel is a "sport" class of vessel. In essence, my wife owns ¼ of the vessel. She does not like to spend the long hours I spend commercially trolling. In a very real way, the vessel is worthless to her. With the regulation now in effect, she cannot spend a day or a weekend out just for the pleasure of jigging up a halibut, or a red snapper or anything associated with sports fishing. I, and many like me, enjoy taking out my friends or relitives for the pure pleasure of being able to take them fishing in Alaska. And what really galls me is that there is no biological basis for this asinine regulation. I was also informed by my insurance broker that as I cannot sports fish from my vessel, I must try to find commercial insurance as the company that endorsed my part time commercial fishing will no longer cover my vessel. I would reccomend the ammending of that regulation to read as follows. "Commercial licensed troll (hand or power) vessels may sports fish only in AREAS that are open to commercial fishing. They must abide by sportsfish regulations and have no commercailly caught fish (salmon or halibut) on board while engaged in sports fishing." This would allow multipule use of the vessel, and allow the commercial fisherman to again enjoy the Alaskan outdoors for the fun and love of it.

In conclusion, the Southeast handtroll Assoc. requests that you repeal all regulations that apply to handtroll only that do not have biological reasons behind them. 5AAC 33.310--5AAC 33.310 (b)(A)(B).

The Southeast Handtroll Assoc. requests that the 4 sport pole-2gurdy limitation on handtroll be left intact, as is. 5AAC 39.270 (A).

The Southeast Handtroll Assoc. requests that you repeal or ammend the ban on sportsfishing from a commercially licensed vessel. 5AAC 48.090.

As chairman I would like at this time to express my sincere appreciation for your willingness to get envolved with the handtroll issue. For to long the handtroller has felt like they were getting the short end of the stick just because they were the little guy. It is also my sincere hope that you recognize the problems that are faced with and can offer a solution to those unjust regulations that we as a fishery have been saddled with. Never has the handtroller been afraid to share in the responsibility for sound resource management. Never has the handtroller been afraid to share in the conservation of the salmon resource, so long as it is done across the board with all of the other fisheries. All regulations for conservation of the salmon resource must apply to hand and power troll as a single fishery because, you see, we really are a single fishery.

With Respect,

Bill Stokes
Chairman,
Southeast Handtroll Assoc.

March 12, 1980

Members of the Regulatory Review Committee:

My name is Alice Bartoo. I have a halibut longline permit and I crew for my husband when we fish gillnet, longline, crabpots, jigging machines, as well as handtrolling. I am secretary for the United Southeast Alaska Gillnetters.

Although our organization usually is working to have the Board of Fish review and change regulations, we now find ourselves depending their position and decisions. Jim Eaton and Greg Cook offered excellent testimony at your public hearing. The Board's decisions on handtrolling are based on extensive and exhaustive research and many, many hours of public hearings. It did not make their decision any easier; it only served to make them more aware of the fact that <u>any</u> decision would be unpopular. The Department of Fish and Game also presented evidence of the statistical decline of coho and increase of handtroll effort.

Three years ago, when Limited Entry was first seriously considered, handtrollers turned out in force at public hearings to cry, "Don't limit our numbers; just give us gear and area restrictions!" Last year, the number of permits was not restricted and there were time and area closures. The fish stocks still suffered because there was still too much gear in the water.

Now, this year a limit has been put on the permits; if you didn't have one last year, you don't get one this year. The limit in numbers of permits and area closures would only maintain the level of last year's effort. To decrease the handtroll take of fish, a gear restriction is necessary. All other gear types are restricted already.

There was much public testimony to the effect that a handtroller could not make a good living at it last year. This should tell them something:

There are not enough troll fish to be caught to support 2100 hand-trollers!

I urge you to consider the effort and testimony that has gone into the Fish Board's decision. While I am glad that any group can have final appeal with the legislature, I think it is important to be careful of undermining the effectiveness of any State Board.

Sincerely,

Alice Bartoo
Secty, U.S.A.C.
Box 847
Juneau, AK 99802

Attached please find 3 information sheets. I made the graphs from ADF&G statistics — P.S.

(11/14/79--SOURCE: ADF&G)

SOUTHEASTERN HAND AND POWER TROLL CATCH IN NUMBERS OF COHO SALMON, 1975-1979.
(1978 and 1979 data is preliminary)

	HAND TROLL					POWER TROLL				
District	1975	1976	1977	1978	1979	1975	1976	1977	1978	1979
101 1/	18,153	12,247	11,840	49,121	10,441	52,222	39,967	54,313	88,479	37,944
102	1,591	1,059	4,818	11,785	19,066	9,305	7,944	10,588	13,554	18,643
103	6,510	11,341	14,118	33,473	52,770	23,129	52,491	22,320	20,107	25,668
104 2/	530	192	1,197	424	2,302	29,283	14,020	17,854	50,943	63,951
105	526	1,853	52	9,702	9,583	8,502	6,853	1,512	6,163	5,279
106	2,735	4,568	3,773	12,552	5,932	4,944	7,402	3,965	5,874	3,155
107	379	530	598	3,991	383	557	1,501	1,880	1,559	233
108 2/	0	202	142	1,774	94	0	57	447	180	11
109	2,081	7,398	16,288	21,116	62,492	7,007	22,069	23,691	21,068	38,260
110	259	1,042	2,001	1,523	3,272	2,004	4,225	5,930	7,287	3,210
111 3/	3,679	7,092	11,271	14,089	981*	2,548	1,478	2,987	1,396	2
112 1/	50	3,737	16,317	33,408	8,249	43	2,347	4,839	4,917	987
113	1,293	13,326	13,086	37,753	32,374	12,677	120,136	64,322	233,495	100,392
114 1/	2,709	19,970	45,975	119,985	13,557	10,932	52,297	50,360	67,530	4,203
115 1/	0	213	3,888	3,097	367	0	1,598	6,318	1,296	152
116 1/	454	3,633	7,563	3,844	21	2,583	47,931	68,269	50,358	63,946
150	0	0	0	0	0	0	859	0	0	321
152 4/	0	0	0	9	2	16	32	0	695	79,190
154 4/	0	0	0	5,547	528	0	4,454	231	66,923	162,497
157	55	291	100	12	0	7,134	47,857	6,013	12,538	16,424
181 4/	0	0	1,999	14,628	316	120	117	1,811	26,929	2,227
183	10	39	668	3,995	4,638	140	193	554	1,455	24
186	0	0	0	602	3,286	0	0	0	163	25
189	0	0	0	100	0	0	160	2,778	21,748	9,510
TOTAL	41,014	88,733	155,694	382,530	230,654	173,146	435,988	351,114	704,657	636,254

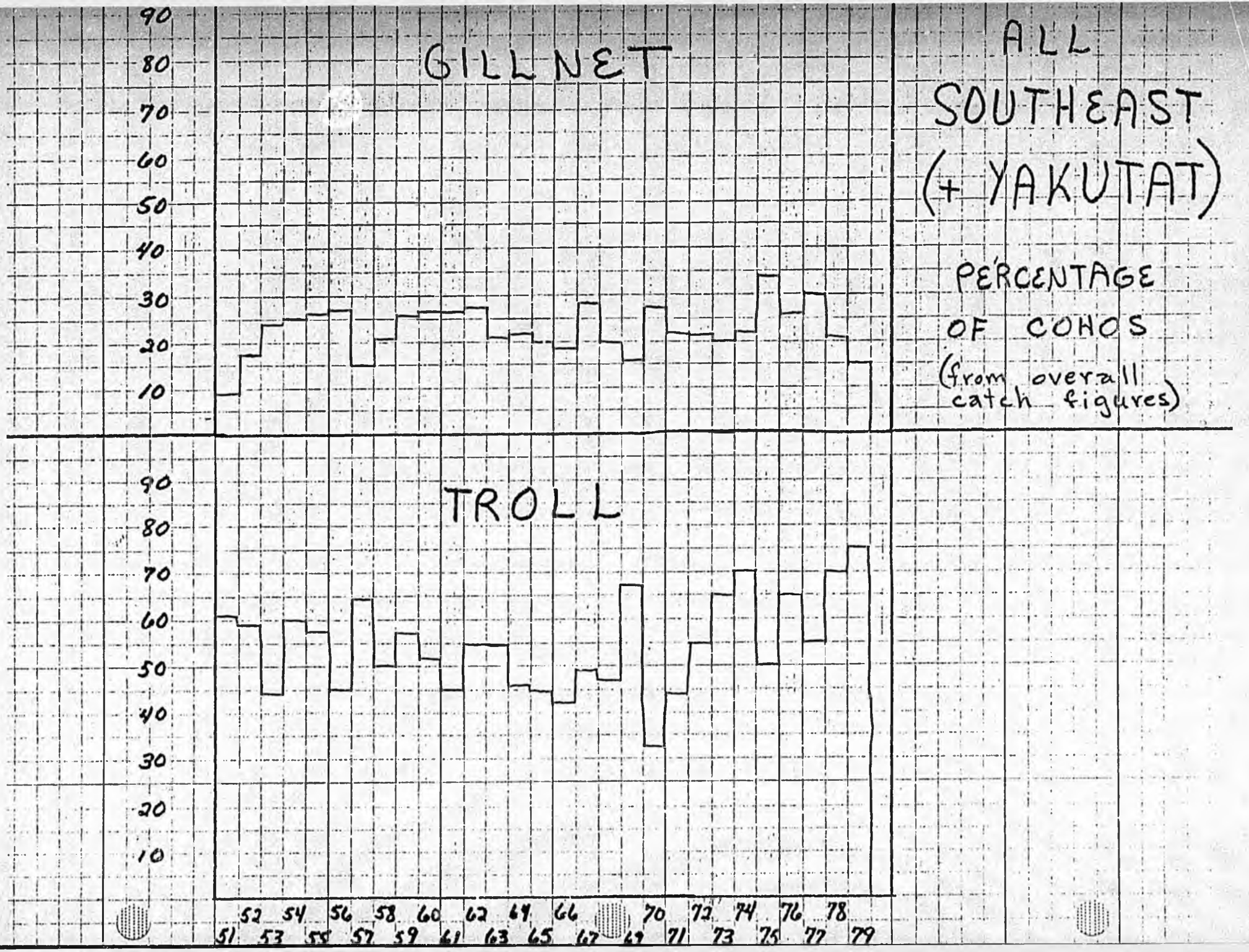
80318 gillnet

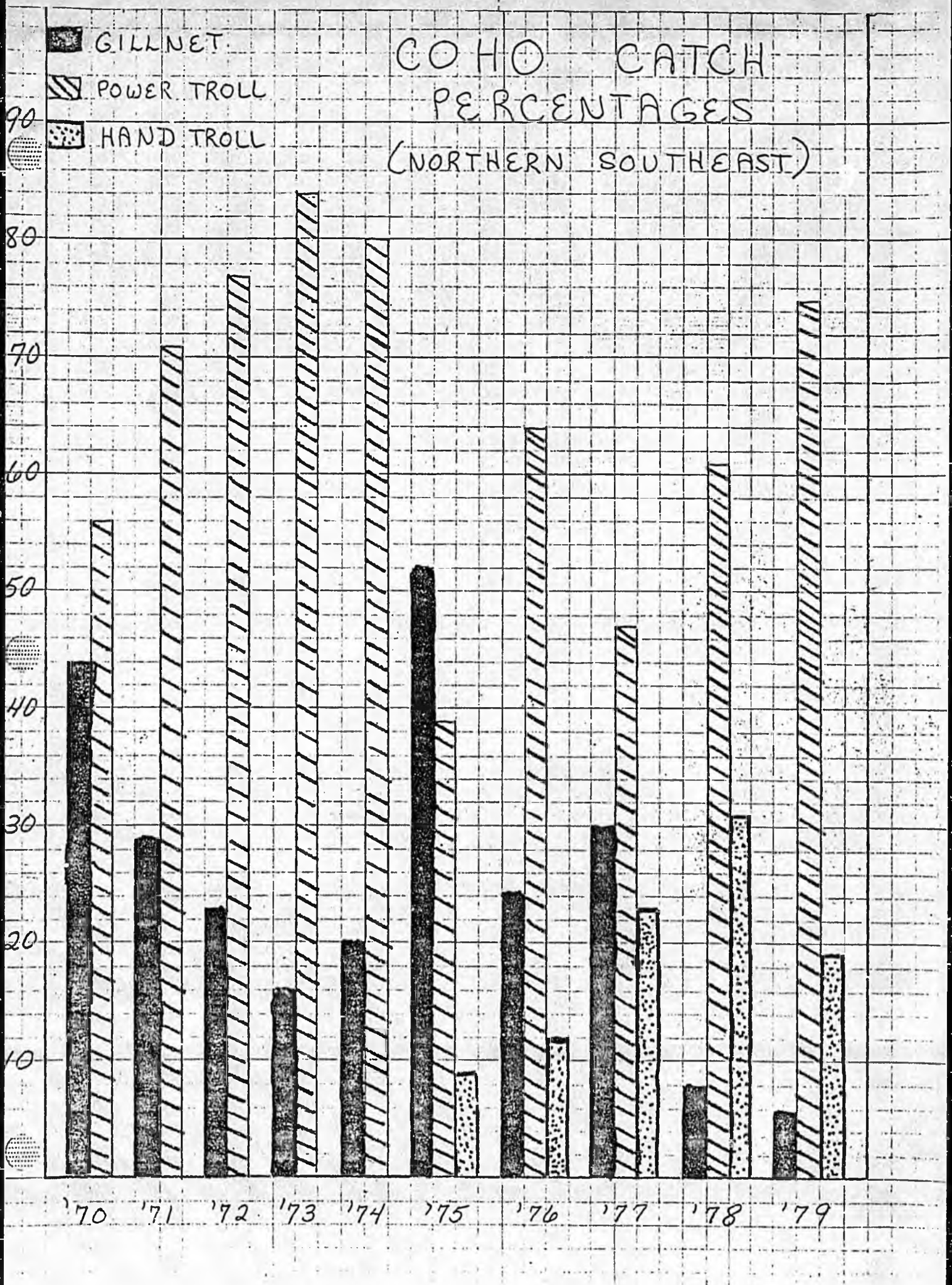
1/ These districts were subject to the 8-on/6-off closures during the 1979 season.

2/ During the 1979 season this district was open to trolling only during drift gill net openings.

3/ The hand troll catch in this district includes derby catch.

4/ Hand troll catch shown for 1978 and 1979 is probably in error since the outside coastline fishery has been closed to hand trolling.


GILLNET
TROLL
90
80
70
60
50
40
30
20
10
51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79
ALL SOUTHEAST (+ YAKUTAT)
PERCENTAGE OF COHOS
(from overall catch figures)


GILLNET
POWER TROLL
HAND TROLL
COHO CATCH PERCENTAGES
(NORTHERN SOUTHEAST)
90
80
70
60
50
40
30
20
10
'70
'71
'72
'73
'74
'75
'76
'77
'78
'79

March 10, 1980
Box 3077
Ketchikan, AK
99901

Administrative Regulation and Review Committee
Senator Don Bennett
Representative Oral Freeman
% State Capitol Building
Juneau, Alaska 99801

Members of the Committee

I have spent many hours trying to come up with some simple answers and proposals to present to the committee. I have failed to arrive at a comprehensive solution, but at least I can pass along my thoughts as to the nature and scope of the problems in hopes they may be helpful.

To protect the fishery as a "viable means of support" it must be limited in terms of permits issued. Basically, there are three categories of handtrollers:

1- Professional fishermen, "would be" powertrollers, legitimate businessman.
2- Subsistence fishermen, native villagers dependent on the fishery, residents of rural communities with limited economic alternatives.
3- Speculators, recreational users and abusers, those who abuse or take advantage of the fishery for tax purposes.

I believe that if an applicant for a permanent entry permit were required to show by means of tax returns a 25% income dependency on handtrolling for any one of the last four years (1976-1979) we would be looking at 1100 permits

instead of 2150. I don't think any legitimate handtrollers would object to this criteria, and the regulatory powers would no longer be faced with the idea of 2150 maximum effort gear units, which is their justification for the stringent, restrictive regulations.

It is unfortunate that we cannot have a wide open, unlimited fishery, but indeed we cannot, and those people who are dependent on the fishery for their livelihoods must be given the first and final consideration.

Although the data is 'weak' and inadequate, no one disputes the fact that some of our salmon stocks are in need of additional protection in the form of reduction of harvest levels. Handtrollers are simply insisting that ALL GEAR TYPES SHARE EQUALLY in this responsibility and this has not been the case!!

Perhaps if handtrollers had some representation things would be different, but there are no handtrollers on the Board of Fisheries. M. Beaton testified that the handtroll regulations were based in part on the recommendations of local advisory boards. I would like to point out that a powertroller by the name of Ed Linkous virtually controls the Ketchikan Advisory Board and this man is almost totally responsible for the outside closure to handtrollers and God knows what else.

I would like to thank the committee for hearing our grievances and trust that the decisions made will be fair to all. Our future.

our business, our dreams of sustaining a living in the fishing industry, now appear to rest in your hands.

Sincerely,
The Wells family

Box 3077
Ketchikan, AK
99901

AIR MAIL
SPECIAL DELIVERY



Administrative Legislation and Review Committee
Senator Don Bennett
Representative Oral Freeman
% State Capital Bldg.
Juneau, AK
99801

AIR MAIL
SPECIAL DELIVERY

Doug Hergert
Box 1616
Wrangell, Alaska

Dear Sir,

I've been hand trolling now for about six years for a living. I'm not making a ting rich at it, but I take a certain amount of pride in my work and give a quality product.

This deal about having two sport poles off the back of the boat with two gurdies is a joke. If you got a salmon on the sport pole he would just get tangelled in your gurdie lines. If they cut hand trolling back to two lines I figure thats going to cut off at least 40% of my fish. So much for making a living at it.

I still have faith in the government as most do, but I think the the people should have a little say in there future rather than be dictated to.

The amount of pressure the hand troll fleet has put on the fisheries is blown completely out of proportion. What about the foreign fishing fleets off our shores.

They deal in Hundreds of metric tons. At least the people that live here and fish here are contributing to the economy of On the subject of the permits going back to the state, I'm totally against this. A fisherman pays good money for that license and anyone that fishes four lines knows you work for your fish. Anybody who has been in the business awhile deserves to do what he wants to with that permit. At least be able to give it to a son or daughter who like to fish too.

You are right about government growth. I agree, but this is just another example of it. I do hope you reconsider on a few of these things. I know quite a few fisherman would have a lot of faith restored back in the system that is actually good.

Doug Hergert

DEC. 19, 1978

IN THE BOARD'S CONSIDERATION OF THE HAND TROLL FISHERY, WE, REPRESENTING THE PROFESSIONAL HANDTROLLERS FROM COMMUNITIES THROUGHOUT SOUTHEAST ALASKA, REQUEST THE BOARD TO GIVE PRIME CONSIDERATION TO OUR ECONOMIC DEPENDENCE ON HANDTROLLING, SUCH AS RESIDENCE IN A TOWN OF A SIZE WITH LITTLE OR NO ALTERNATIVE OPPORTUNITIES FOR INCOME, AND PER CENT OF INCOME DERIVED FROM HAND TROLLING. WE ALSO ASK THAT YOU CONSIDER SUCH MANAGEMENT AS WILL PROVIDE FOR A CONTINUING, VIABLE, COMMERCIAL FISHERY, OPEN TO ENTRY BY OUR CHILDREN, WITH SOME SYSTEM OF NON-MONETARY TRANSFER OF PERMITS.

WE WILL NOT SUPPORT REGULATION WHICH SPECIFICALLY DISCRIMINATES AGAINST HANDTROLLERS AS OPPOSED TO POWERTROLLERS.

ANGOON: CHARLIE JIM, SR.
DENNIS EAMES
ANDREA EAMES

CRAIG: ROBERT FULTON

HOONAH: ARCHIE BROWN, SR.
ALBERT DICK

PORT ALEXANDER: JOHN BADER

POINT BAKER: TOM JACOBSON

PORT PROTECTION: HOWARD PENDELL

SITKA: ALFRED PERKINS

YAKUTAT: BOB ANDERSON
HANK PORTER

TLINGET-HAIDA CENTRAL COUNCIL AND SEALASKA CORP.: GIL GUNDERSON

Point Baker Hand Trollers Assn.
Point Baker, Alaska 99927

Commercial Fisheries
Entry Commission
Pouch KB
Juneau, Alaska 99811

31 January, 1980

Dear Sirs:

The Point Baker Hand Trollers have read your Hand Troll presentation to the Board of Fisheries which you presented in Anchorage last month and offer the following comments and proposal in response.

We are deeply disturbed by your plan to force even more restrictive regulation on Alaskan Hand Trollers instead of reducing the number of permits. As you know, in the seventy some year history of Alaskan Salmon Trolling all trollers have been regulated equally up until eighteen months ago when hand trollers were expelled from the Coastal Fishing Zone. It was in anticipation of this first discriminatory troll closure and the ones that followed that promted the Point Baker Hand Trollers Association to push for limited entry with the understanding from the Board of Fisheries that these interim closures would then be lifted and the troll fishery would again be managed as one. Instead the Commission has opted for an unrealistically high number of permits and now suggests further regulation to reduce our efficiency. The majority of the testimony at the Commission's public hearings which supported such action came from part-timers and urban recreationalists who do not stand to loose their sole means of income as full-time trollers in Point Baker stand to loose.

The Commission seems to have taken in account the situation of everyone but the true fisherman, that is the full-time professional hand troller. "It is definitely not our intention to purposefully single out those individuals as the culprits of the hand troll fishery." You say concerning the more efficient professional hand trollers. "We would hope that through discussions among the Board, the Commission and other interested parties that a mechanism might be developed to 'Grandfather' those operations that have established themselves as models of the efficient hand troller." Although we disagree entirely with your plan to make hand trolling a relatively inefficient, highly regulated, "entry level" fishery, we feel your proposal to "Grandfather" professional hand troll operations is absolutely essential should your vision of the future hand troll fishery be followed.

To this end we propose that the 600 most economically dependent hand trollers be granted non-transferable "Grandfather Rights" to continue hand trolling as they did prior to June 1978, (on the same basis as power trollers.) The Board of Fisheries has already said that 600 hand trollers could readily be regulated on the same basis as power trollers, even considering potential increases in hand troll

efficiency. Considering that such "Grandfather Rights" would not be transferred with the transfer of the hand troll permit, the relatively efficient operations would steadily decline. Further investment in a dead-end mode of fishing among the "Grandfathered Hand Trollers" would have little incentive, as a well equipped four-line outside hand troller will have no future buyers. Remember, too, that many of these "Grandfathered Hand Trollers" have already achieved the maximun practical level of efficiency manageable with hand-cranked gear. Therefore, overall efficiency and effort of the "Grandfathered Hand Trollers" can be expected to drop steadily as people move out of the fishery, eventually phasing themselves out altogether.

The Point Baker Hand Trollers Association recommends that elgibility for "Grandfather Rights" be weighed on the following criteria:

1. Per cent of income derived from hand trolling in each year, 1975-1979.
2. Availability of alternative employment in place of residence, (size of community.)
3. Current and past participation, 1975-1980.

In rural communities like Point Baker and Port Protection where many families are totally dependent on hand trolling with no alternatives available, poverty, increased public assistance and dislocation of heads of family will be unavoidable if your vision of the future hand troll fishery comes to pass without at least providing the "Grandfather Rights" you suggest to establish full-time trollers.

Sincerely,

Tom Jacobson

Tom Jacobson, Hand Troller
Point Baker Hand Trollers Assn.

OUTSIDE WATERS DATA

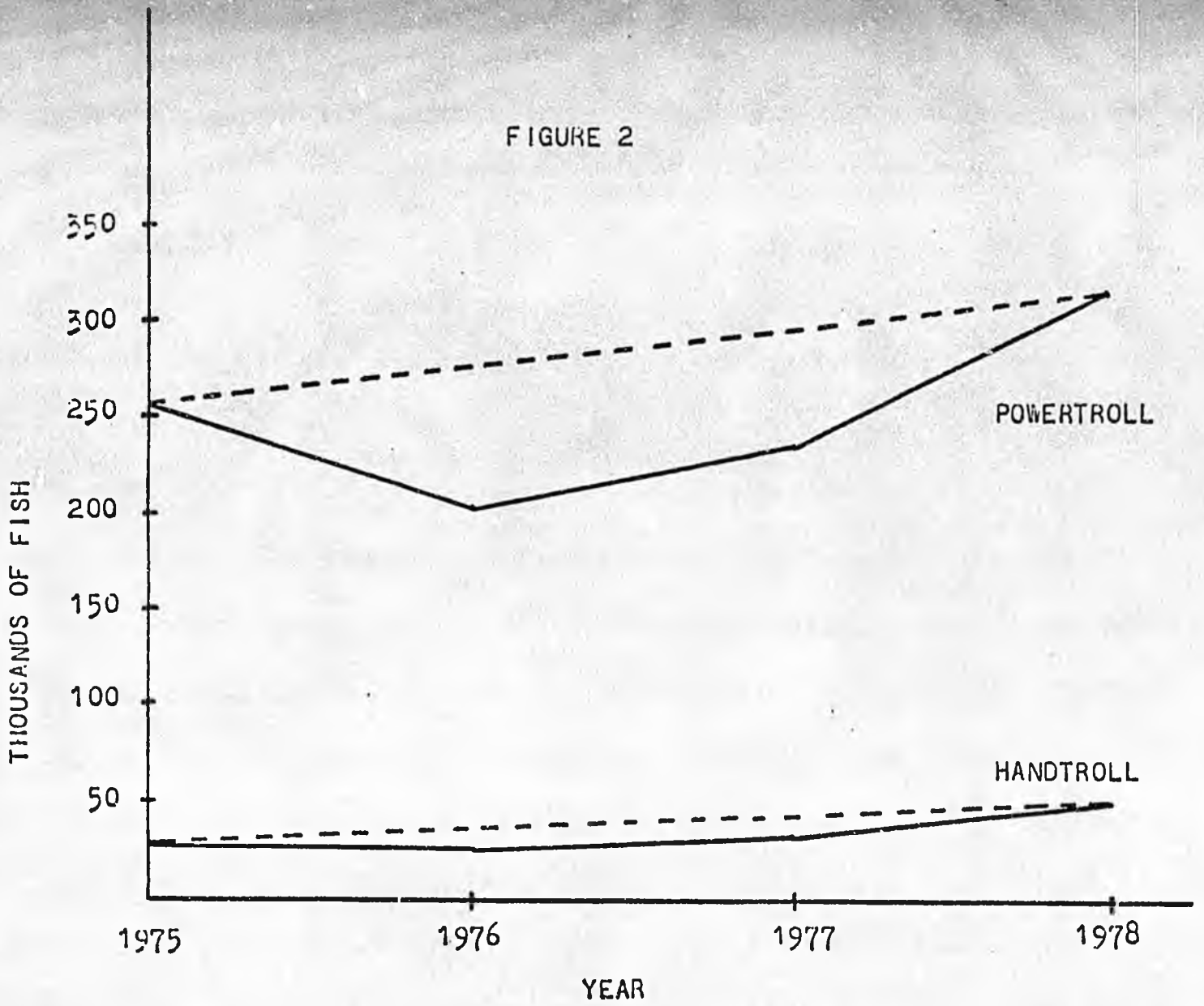
USING DISTRICTS 104, 113, 116, 152, 154, 157

NOTE: THESE FIGURES USE DISTRICT 113 WHICH INCLUDES A SUBSTANTIAL AMOUNT OF INSIDE WATERS SUCH AS SITKA SOUND, SALISBURY SOUND, ETC. THEREFORE THEY WILL TEND TO SHOW A LARGER AMOUNT OF FISH CAUGHT BY HANDTROLLERS IN OUTSIDE WATERS THAN WAS ACTUALLY THE CASE, SO ALL PERCENTAGES MAY BE CONSIDERED TO BE MAXIMUM PERCENTAGES.

COHOS:	1975	1976	1977	1978
NUMBER FISH TAKEN BY:				
POWERTROLLERS	51,693	234,330	156,689	414,257
HANDTROLLERS	2,332	17,442	21,946	47,580
TOTAL TROLL	54,025	251,772	178,635	461,837
% OUTSIDE TROLL FISH TAKEN BY HANDTROLLERS	4.3%	6.9%	12.3%	10.3%
AVERAGE OVER FOUR YEARS	8%			
TOTAL TROLL CATCH OF COHOS FOR SOUTHEAST	214,160	524,721	506,808	1,087,137
% SOUTHEAST TROLL COHOS TAKEN BY HANDTROLLERS IN OUTSIDE WATERS	1.1%	3.3%	4.3%	4.4%
AVERAGE OVER FOUR YEARS		3.3% !!		

KINGS:	1975	1976	1977	1978
NUMBER FISH TAKEN BY:				
POWERTROLLERS	154,331	100,741	157,237	236,863
HANDTROLLERS	5,769	4,563	10,098	16,274
TOTAL TROLL	160,100	105,304	167,335	253,137
% OUTSIDE TROLL FISH TAKEN BY HANDTROLLERS	3.6%	4.3%	6.0%	6.4%
TOTAL TROLL CATCH OF KINGS FOR SOUTHEAST	287,337	231,188	271,758	371,328
% SOUTHEAST TROLL KINGS TAKEN BY HANDTROLLERS IN OUTSIDE WATERS	2.0%	2.0%	3.7%	4.4%
AVERAGE OVER FOUR YEARS		3.0% !!		

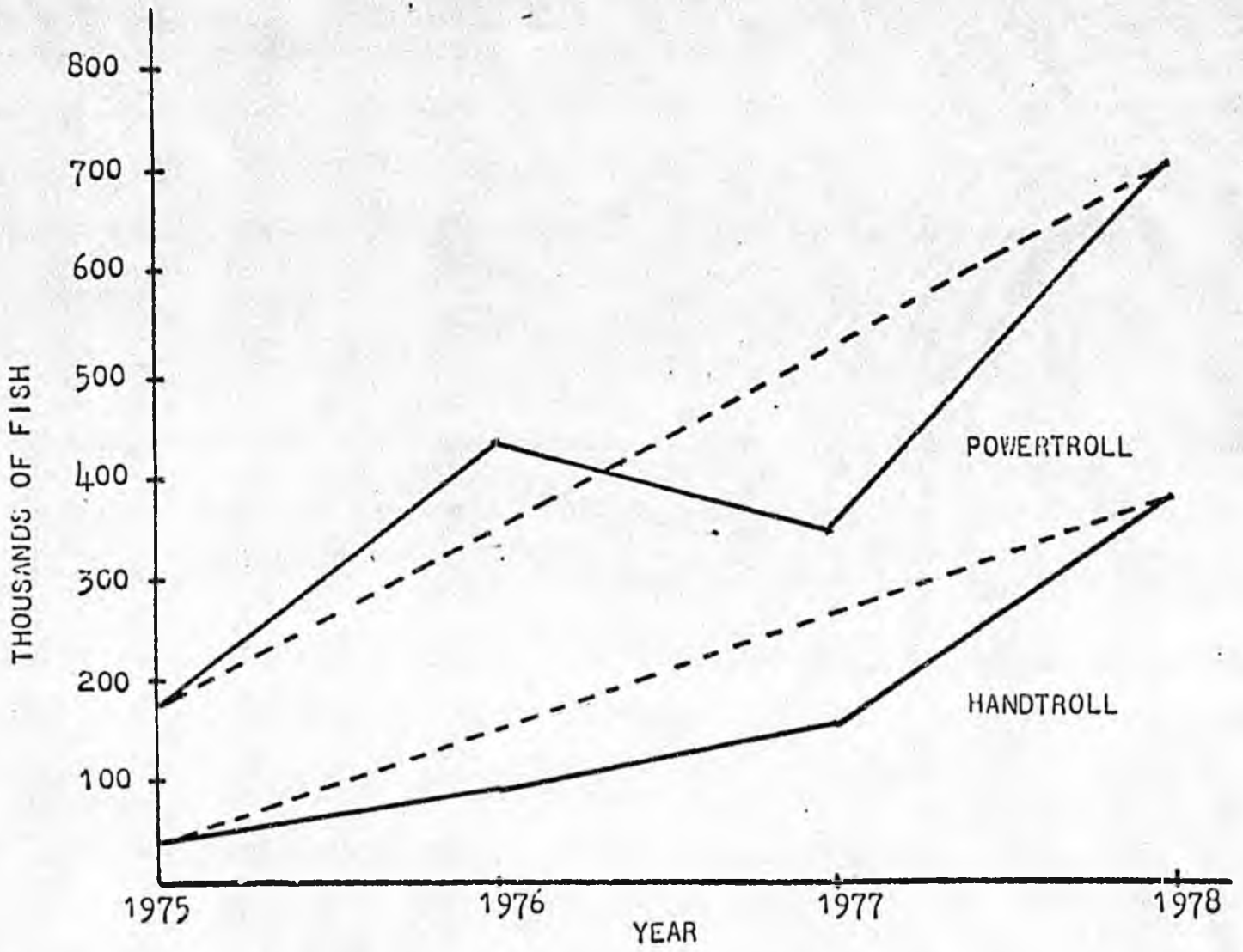
FIGURE 2



SOUTHEASTERN TROLL CATCH OF KING SALMON BY GEAR TYPE

EXPRESSED IN TOTAL CATCH

FIGURE 1



SOUTHEASTERN CATCH OF COHO SALMON BY GEAR TYPE

EXPRESSED IN TOTAL CATCH

The Point Baker Hand Trollers Association has examined the draft of the 1980 troll plan. We present here a review of the plan's text, particularly in its relation to hand trolling, comments on the plan's methodology, and finally, specific recommendations as to changes in text.

INTRODUCTION

The Point Baker Hand Trollers Association believes that the troll fishery should be managed as one fishery. The notion that trollers who are permitted to retrieve their gear with power deserve preferential regulatory treatment over trollers who retrieve their gear by hand was championed by the power troll lobby. The first discriminatory troll regulation, the closure of coastal waters to hand trollers only, was enacted in June, 1978. Never before in the long history of the troll fishery had such regulatory discrimination been made. Prior to June, 1978, regulations on trolling have always been born equally by all trollers, regardless of the manner in which they retrieve the gear. Further troll closures were made in 1979 for certain inside areas and the FCZ, and again power trollers received special exemption. Forcing those trollers who have had the least impact on the resource to accept closures, in the name of conservation, while allowing those trollers who have had the greatest impact on the resourse to fish unrestricted, is plain nonsense and totally baffling to any non-bureaucratic mind.

POWER AND HAND TROLL: SIMILARITIES AND DIFFERENCES

The notion, as stated in the plan, that "hand trollers and power trollers are two groups of fishermen who do not use essentially the same type of gear," is false. The gear is exactly the same, from hook to gaff hook. The only difference is the kind of power used to retrieve the gear, muscle or mechanical. Even the gurdies themselves are often identical, the only difference being either a handcrank or mechanical coupling on the end of the gurdy shaft. Hooks, spoons, plugs, leader, wire line, poles, rigging, blocks, and all the miscellaneous hardware commonly known as troll gear is exactly the same identical gear, regardless of the source of power used to retrieve it. Many former power troll boats are today hand troll boats with the simple addition of a crank to the gurdies. The extreme difficulty of telling one boat from another was demonstrated by this year's new regulation requiring identifying markings on all trollers so that law enforcement personnel could tell the hand trollers from the power trollers. Both hand and power trollers are found fishing side by side, fishing in the same method, following the same strategies, and fishing for the same fish. Distinctions between these two groups of trollers are completely insignificant compared to differences between other gear types such as purse seine, gillnet, longline, trawl, etc., where the actual gear and hardware, fishing methods, strategies, vessel design, and target species are unique to each fishery. To attempt to regulate and allocate among trollers is not the same thing as to

regulate and allocate between, say, seiners and gellnetters. On the other hand, this is not to say that power trolling and hand trolling areequally effective. Although the gear itself is identical, the use of mechanical power allows the gear to be "run" faster, deeper, and more frequently than the average set of muscles generally allows. This can make the use of the same gear much more effective. An analogy may be made to the use of the power block in purse seining, making the use of the same gear(in this case a net)more effective than without a power block. But the seiner who uses a power block does not become a different gear type by virtue of such use.

The arguments presented as justification for treating trollers as two distinct gear types on page 21 of the draft plan are embarrassingly contrived. We respond to them in the order presented:

A. The fact that the Commercial Fisheries Entry Commission chose not to include hand trolling under a limited entry program at the same time as power trolling does not necessarily make it a separate gear type. The CFEC is now, in fact, in the process of including the hand powered portion of the troll fishery under limited entry as well.

B. The definitions used by the state to describe hand trolling and power trolling are only several years old and have been changed a number of times. Still, the line of distinction remains drawn strictly on the type of power used to retrieve the gear, muscle vs. mechanical.

C. Sport rods are rarely used by handtrollers, but being hand powered, remain legal. They can also be used by power trollers, though rarely are. They form no basis of distinction between commercial trollers.

D. The fact that recent regulations have been made which, in their application, discriminate between trollers, does not make the two groups essentially different gear types. Laws that prohibited persons with black skin from sitting in the front of the bus did not make them essentially different types of persons, in spite of what was claimed at the time by those state law makers who made such distinctions.

E. Regulations of jigging machines are the same for power trollers, hand trollers and non-trollers. No distinction in gear types is made, as implied in the draft plan. The statement that "distinct and differential treatment between these two user groups is and will continue to be a significant aspect of managing the resource," is highly presumptuous. Hand trolling has been conducted in Southeast Alaska for nearly 75 years. Power trolling, as we now call it, has been around some 50 years. Preferential regulatory treatment for power trollers is 18 months old. These recent closures on hand trollers only were primarily adopted to "control expansion of an unrestricted fishery" in lieu of any existing limited entry program. Now, with the advent of limited entry for hand trolling, it can be expected that these interim closures will be re-evaluated. Furthermore, the impact of these closures on the social environment as well as the resource has yet to be examined. Such examination may lead to the discontinuance of differential treat-

ment among trollers, regardless of limited entry. It is unlikely that the Board of Fisheries will wish to remain locked in to an unsuccessful management strategy, as is suggested by the statement in the draft plan.

On page 23 of the draft plan appears the statement, "A detailed analysis of each fleet's effort--expressed by criteria such as vessel characteristics(seaworthiness, hold capacity, range, electronics, etc.) ...should show that a 'typical' hand troller is significantly different from a 'typical' power troller." Saying that the "typical hand troller" is significantly different from the "typical power troller" is no justification for treating trollers as though they were two different gear types, but rather is a crude generalization of the difference in socio-economic status of the two groupings of trollers. Historically, hand trollers have mainly been those trollers not able to afford the cost of powered gurdies. Today, with power troll permits selling in excess of $30,000, the socio-economic distinction between trollers continues. Hand trollers are now those trollers who can not afford $30,000 for the luxury of powered gurdies. Likewise, the "typical hand troller" cannot afford a boat of the size and capability of the "typical power troller." However, these socio-economic differences in no way justify regulatory discrimination against the relatively economically disadvantaged group of trollers. The "typical hand troller," in spite of his sesser capability of effort, should have just as much right of access to the fishing grounds as the "typical power troller." The notion that the right to fish of hand trollers is somehow more expendible than that of a power troller is one hand trollers, as Americans, can not accept. Hand trollers have a right to equal treatment under the law. As has been shown, differential regulatory treatment of trollers derives from distinctions that have no reasonable basis and are largely arbitrary in application.

HAND TROLL CLOSURES, THE FCZ, AND LIMITED ENTRY

As stated before, the Point Baker Hand Trollers Association believes trolling must be regulated as one fishery. Therefore, hand trolling in the FCZ should be allowed on the same basis as power trolling. Beginning on page 23 of the draft plan, possible consequences of continuation of the present policy are listed, to which the following comments are addressed:

1. Leaving the FCZ open to hand trollers will in no way obstruct the state's efforts to control expansion of the troll fishery, as claimed in the draft plan. All the traditional management tools(limitation of vessel days, quotas, gear restriction, etc.)will remain as options for controlling effort in the troll fishery. Closing the area to hand trollers only merely deprives a small number of people of a portion of their traditional livelihood, forcing their efforts into the more biologically sensitive inside areas. Their impact on the FCZ fishery, as pointed out in the draft plan, is insignificant. As the state is now including the hand powered portion of the troll fishery under limited entry, reducing the fleet to near 1975 levels, the potential for unrestricted growth in this portion of of the fishery is no longer possible. Furthermore, federal

limited entry for hand trollers in the FCZ remains a viable option.

2. Significant expansion of the power troll effort, in the past five years, has occurred in the FCZ, while hand troll effort has remained insignificant in the FCZ, as is stated in the draft plan. Allowing this admittedly insignificant participation to continue in the FCZ, in the face of the expanding power troll effort in the FCZ, should therefore have no effect on West Coast U.S.-Canada negotiations in regard to the issue of not allowing significant expansion of the intercepting fisheries. The statement in the draft plan that "The efforts of Alaska to limit the potential expansion of the hand troll effort in its coastal and offshore intercepting fishery have been favorably received by representatives of all parties involved," is insulting to hand trollers, as they are the only party directly affected, and very detrimentally, and whose opinion was never even considered.
3. The "difficult enforcement sityation" that now exists will be eliminated when trollers are treated equally under the law. Specifically, these enforcement difficulties offshore will be eliminated when the recent ban on hand trollers in coastal waters is eliminated. With the advent of limited entry for hand trolling, the future of this and other discriminatory closures is in doubt. in Appendix F, "Power Troll--Hand Troll Interactions," it is stated that "present regulations concerning power troll-hand troll interactions should be viewed as <u>interim measures</u>. Restrictions on the further expansion of the number of hand troll units and reduction of that number through an acceptable limited entry system should receive priority." The closure, by the Board of Fisheries of the coastal waters to hand trollers was based on the absence of a limited entry program at that time. The CFEC now intends to limit 1980 permits to those who fished in 1978 or earlier, and by 1981 permanently limit permits to near 1975 levels. Therefore, future enforcement problems would likely increase if hand trollers are banned from the FCZ.
4. As stated here in the draft plan "The small number of operators that did occasionally fish offshore caught an insignificant portion of the total troll fishery harvest." There is no evidence to indicate any significant increase in effort by hand trollers in the FCZ. The threat of "a major increase in offshore troll effort...within a few years" if hand trollers are not banned, is prue speculation and is not born out by any statistics. On the other hand, a substantial increase in power troll effort <u>has</u> been documented and it is logical to assume that increased effort in the future will continue to come largely from <u>this</u> group, not from trollers using hand power. To ignore the real source of increased FCZ harvest, namely increased power troll effort, and use the admittedly insignificant harvest by hand trollers as a scapegoat, is disgraceful not only to efforts to save the resource, but on the basis of ordinary fairness.

5. The Point Baker Hand Trollers Association is well aware of the plight of many salmon stocks and encourages whatever limitation on effort that is required to protect and rebuild runs, so long as such restrictions are born equally by all trollers and not exclusively by those who use hand power. To exclude hand trollers from participating in the FCZ while allowing power trollers, also negates National Standards of the FCMA, namely, "to allocate fairly" and "to allow for variations in fishery."
6. Hand trollers should be allowed to fish in the FCZ in the same manner as power trollers have been allowed--currently meaning, under a system of limited entry, be it state or federal. As state limited entry for hand trolling is now being formulated, continuing the current system, for the interim, may be the most practical course. Still, a federal limited entry system would be preferable to denying individuals access to their traditional fishing grounds. In fact, on page 42 of the draft plan it plainly states that "...limited entry is less socially and economically disruptive than alternative management measures designed to restrict trolling in the FCZ."

The draft plan goes on to state that "each change in the fishing pattern of an Alaskan salmon fishing fleet necessitated by new restrictions has secondary impacts on numerous rural communities. The Alaska Board of Fisheries tries to minimize these secondary impacts, but to allow further increases of trolling effort offshore will only speed the closure of more inside areas and could force a major disruption of existing fisheries and the communities which they support." The facts have proven that just the opposite happens. Forcing hand trollers to abandon outside waters has hastened, not minimized, impacts on rural communities. To take one example from the 1979 season, the closure of outside waters to hand trollers had the following impact on our community, Point Baker, located inside Area 6:

1. Local hand trollers who normally rely heavily on outside areas for their livelihood were forced to concentrate efforts on the less profitable and more biologically sensitive inside areas. This resulted in substantial loss of potential personal income and increased pressure on depleted local salmon stocks.
2. This fleet(displaced by the outside closures) plus a large Ketchikan fleet(displaced by Area 1 closures on hand trollers only)plus the usual Point Baker "homeguard" concentrated to create an unusually intense and competitive effort in our area. Boats and litter clogged our harbor. Local fuel and other supplies were exhausted. Local fishermen caught a smaller proportion of an already small catch.
3. Due to the scarcity of fish and unusually high levels of effort, Area 6 was finally closed to trolling altogether.

Forcing hand troll effort from outside to inside waters has negative impacts on individual fishermen, rural communities, and most certainly on the resource.

Closure of the coastal fishing zone to hand trollers was implemented before the CFEC had begun action on limited entry for hand trollers. Not being under limited entry, the increase in the number of hand troll

permits annually issued was given as the primary reason for closures to hand trollers only. Under the CFEC's timetable, a moratorium on new permits will be in effect for the 1980 season, limiting participation to those who fished prior to 1979. By 1981, the number of permits should be permanently reduced to near 1975 levels, the year limited entry was enacted on power trolling. Therefore, entry into the hand troll fishery is no longer unrestricted and the basic premise, on which closures to hand trollers were enacted, is no longer valid. Thus, with the advent of limited entry for hand trolling, the coastal waters as well as the FCZ and other areas should be open or closed to all trollers on an equal basis.

It should also be remembered that the increase in numbers of hand troll permits that occurred during the years 1975-1978 was due primarily to urban recreational fishing and permit speculation, not trollers who customarily fish the outside waters. For example, here in Point Baker, the number of hand troll permits fished in 1975 was 48. In 1978 there were 49. In Juneau in 1975 there were 205 hand troll permits and in 1978, 784 permits were fished(CFEC records). In effect, Point Baker hand trollers, who rely entirely on fishing for a living and have not increased in number, were excluded from their usual outside grounds as a result of an increase in the purchase of permits by predominately urban non-fishermen who do not rely on these waters for a living. In the proposed draft of the plan which preceded this one, one of the policie stated for directing management objectives was to "Stabilize the hand troll portion of the troll harvest with preference to rural and economically dependent trollers." We feel the deletion of this policy from the present draft of the plan is a very serious mistake. Regulations effecting hand trollers have enormous impact on rural communities like Point Baker, far beyond that felt by urban recreationalists. Management policy must be shaped with this greater socio-economic impadt on rural and economically dependent trollers in mind. We would like to see this policy reinstated in the final plan.

METHODOLOGY AND ENVIRONMENTAL IMPACT

The Point Baker Hand Trollers Association agrees with Sea Grant Advisory Specialist, Zach Lea, when he wrote in an article in the 1977 Yearbook Issue of National Fisherman, entitled "Successful Fisheries Management Needs 'People Input,'" that "...too much of current fishery management science is aimed at finding the best allocation package for a resource rather than showing the effects of alternative packages on the resource and the people using it. Scientists are going too far beyond their proper bounds when they dictate the best solution to resource allocation problems." These words should be kept in mind when drafting a troll plan, particularly in regard to hand trolling. Clearly, eliminating trollers who use hand power from their accustomed fishing grounds will have effects on these users of the resource. In the 230+ pages of this draft plan, no study or even mention of such effects is made. In fact, no impacts on the social environment at any level have really been examined in this draft plan. The only alternative management packages presented in the draft plan are in relation to limited entry for power trollers in the FCZ, and here the stated advantages and disadvantages of the various alternatives relate only to the relative ease

of administration and enforcement rather than social impacts or resource impact. In relation to hand trollers, no alternatives are presented and no studies of social impacts have been considered.

Although at the bottom of the list of research recommendations mention in the draft plan is made that"Information is also needed on the potential consequences of alternative management strategies, particularly from a socio-economic perspective," it would seem that such information is absolutely prerequisite to the drafting of any plan that has such broad and drastic social effects. Anthropologists and sociologists are certainly needed to provide the social science research to put the already extensive biological science research into the proper perspective to form sound management policy. Particularly with regard to the dependence on hand trolling in rural Alaska, many questions need to be asked which go beyond the realm of the biological sciences. For example, what is the actual monetary cost to individual communities of hand troll closures? What is the cultural cost, particularly in Native communities? How does hand troll catch relate to public assistance roles, food stamp requests, unemployment, and other costs to society? What are the cultural costs to our society when "the big guys squeeze out the little guys," when small independent businessmen must leave their home communities to become wage earners or become welfare recipients? We wonder if fishery managers realize the gravity their decisions have on the lives of many rural Alaskans. There is nothing in this draft plan to indicate so.

Clearly, the loss of our salmon resource would have the most far reaching social impact of all. The Point Baker Hand Trollers Association is totally supportive of all meaningful regulations and laws to conserve the resource. All we ask for is equal treatment under such laws. Regulations to limit troll effort must be applied equally to all trollers.

SPECIFIC RECOMMENDATIONS FOR TEXT REVISION

Pages 20-26

Eliminate Regulatory Recommendation 1 and associated discussion. Substitute:

1. The troll fishery shall be regulated as one fishery. Existing regulations which apply only to the hand troll portion of the fishery shall be eliminated. This will:
    1. Provide equal treatment under the law. Trollers use the same type of gear regardless of whether it is retrieved manually or mechanically. To regulate differently is to give preferential treatment under the law to one group, where the distinction between groups is largely arbitrary and has no reasonable basis.
    2. Provide for fair allocation. The National Standards of the FCMA require management "to allocate fairly." Regulating trollers equally will ensure that conservation measures are born equally by all trollers, rather than effectively allocating fish to one group exclusively.
    3. Allow for variantions in fishery. The National

Standards of the FCMA require management "to allow for variations is fishery." Eliminating only hand or power trollers from an area would not be allowing for variantions in fishery.

4. Simplify management. Developing one set of regulations for the troll fishery instead of two inter-dependent and often conflicting sets of regulations will greatly simplify management.
5. Simplify enforcement. Conflicting and controversial regulation will be eliminated. The same rules will apply to all trollers. The need for identification of vessels as to gear retrieval method will be eliminated.
6. Minimize costs. Simplification of enforcement and management will minimize costs, one of the requirements of the National Standards of the FCMA.
7. Prevent disruption of established social, economic, and family structures. Regulation aimed exclusively at hand trollers has far reaching social impact, particularly in rural Alaska, where dependency on this mode of trolling is often total. Depriving individuals significant portions of their income when their income is already relatively meager and when no alternatives for income are available will be avoided. Dislocation of heads of family to find work unavailable at home will be avoided. The continuation of small-time capitalism will be allowed; the continuation of cultural values associalted with fishing will be allowed.
8. Provide for conservation. The application of all management tools will continue to be possible. The options of quota, vessel day limitation, area closures, etc., will remain viable. However, all trollers will be equally effected by any such limitation: not just one class of trollers.
9. Be consistent with historical regualtion of the troll fishery. In the 75 year history of Alaska trolling, no regulatory preference has ever been given to trollers who use power to retrieve their gear over trollers who use their muscles, the past 18 months excepted.
10. Recognize the fact that hand trolling is no longer an "open fishery." The recent hand troll closures were based on the fact that hand trolling was unrestricted in potential growth because it was not yet included under limited entry. This is no longer the situation. The CFEC intends to have a moratorium in effect for the 1980 season, limiting entry to those who fished prior to 1979, and by the 1981 season, to have permanently reduced the number of permits to near 1975 levels, the year limited entry was applied to power trolling.

Page 10. Paragraph 2:
Line 6: Change "efficient" to "effective."
Line 7: Sentence beginning "However..," change to: Hand troll vessels usually operate at less expense than power troll vessels and, because of lesser vessel capabilities, less need to recapture capital investments in permits and large vessels, or closure of more profitable areas to hand trolling, may fish in areas that power trollers cannot profitably fish.
(This more realistically describes the actual situation.)
Line 9: Delete the word "further."
Line 11: Delete the word "therefore."

Page 13, Item 2: Change to: Management strategies that lead to disruptions of established social and economic structures are undesirable.
(In keeping with the previous draft.)

Page 14, Item 4: Change to: The existing CFEC power troll limited entry system is well established and stabilization of the hand troll portion of the troll harvest has begun by CFEC, with preference to rural and economically dependent trollers.
(In keeping with previous draft.)

Page 18, Line 5: Delete: "And, if necessary, regulations."
(An effective program is one which precludes need for separate regulation. Redundant.)

Submitted by:
Tom Jacobson, hand troller
Point Baker Hand Trollers Association

October 17, 1979.

Point Baker Hand Trollers Assn.
Point Baker, Alaska 99927

October 10, 1979

Commercial Fisheries Entry Commission
Pouch KB
Juneau, Alaska 99811

Dear Sirs:

The Point Baker Hand Trollers Association would like the following comments considered as part of your public hearing concerning the inclusion of Hand Trollers under limited entry. We limit our remarks at this time to the appropriateness of limited entry for the hand troll fishery, the proposed number of Permits, and potential inequities under a limited system.

For nearly two years the Point Baker Hand Trollers have publicly supported limited entry for the hand troll portion of the troll fishery. On January 22, 1978, we sent the Commercial Fisheries Entry Commission, the Board of Fisheries, and the Department of Fish and Game, a petition, signed by over 95% of all residents of Point Baker and Port Protection, in support of limited entry for hand trollers. In the letter accompanying the petition and proposal for limited entry we said:

> "The following proposal [for limited entry] is being made by full-time Hand Trollers living in Point Baker, Port Protection, and other small fishing villages. We are not recreational fishermen, but a diverse group of commercial trollers ranging from skiff-fishermen, content with near subsistence incomes, to former power trollers who were denied permits under limited entry. What we have in common is our overall dependence on commercial hand trolling for our livelihood, there being no alternative sources of income, practically available, where we live. Therefore, proposed changes in the hand troll fishery have total bearing on our futures, that of our families, and our communities."

Since then, our fears for the future of our fishery have proven justified. Later that year the Coastal Fishing Zone,

our most productive troll area, was closed to hand trollers, while remaining open to power gear and purse seines. The following year all of districts 1 and 14, and portions of districts 11, 12, and 15 were closed to hand trollers only, for 43% of the time. Every year recreational users of hand troll permits in the urban areas propose gear limitations that would destroy economically dependent hand trollers. Power troll and gillnet organizations then support the restrictions as a way to thwart what they perceive as a potential threat to "their" salmon resource by an "unlimited fishery."

Since 1978, the Board of Fisheries has repeatedly taken the stance that unless the growth potential of the hand troll portion of the troll fishery is limited, more and more restrictive regulations can be expected. For those of us completely dependent on trolling for our livelihood, with no alternatives available where we live, further restrictions applied exclusively to hand troll gear are totally unacceptable. Compared to others, our incomes are already meager. In Southeast Alaska's rural communities more public assistance and dislocation of families can be the only result if the hand powered portion of the troll fishery is not given the same protection of limited entry as every other commercial salmon fishery.

Our criteria for determination of the number of permits would be as follows:

1. That the number of permits be large enough so that all fishermen economically dependent on hand trolling can receive permits.

2. That the number of permits be small enough so that the Board of Fisheries cannot justify regulating the hand powered portion of the troll fishery more restrictively than those trollers allowed to use power.

One thousand one hundred (1,100) permits appears to be a very reasonable number, realizing, of course, that we do not have access to statistics on income dependence, location of residence, etc.

The Point Baker Hand Trollers Association has certain reservations concerning potential inequities under limited entry. While we emphasize that we would not want these concerns to

in any way threaten the inclusion of hand trolling under limited entry as soon as possible, they need to be addressed at some point in the future. They are:

1. Any point system developed must give much more consideration to economic dependence than has been given other fisheries. Specifically, percentage of income derived from hand trolling and residence in a locale with little or no alternatives for income, must be the primary determinants.

2. As we understand current proposals, those who fished for the first time in 1979 would not be eligible for a permit. Remembering that those who first power trolled in 1973 and 1974 were eventually allowed to apply for a power permit, (though not gain any extra points for that participation) we feel it only fair that first time hand trollers in 1979 at least be allowed to apply.

3. With the institution of limited entry some additional criteria for the issuance of restricted gear interim-use permits might be considered. Perhaps only "small commercial operations" as currently defined by the Department of Fish and Game, or perhaps those over 65 years of age, students, those eligible for public assistance, urban sportsmen on a lottery basis could be allowed to fish with one line on an interim-use basis. This might provide for a limited use of the resource by those non-dependent users who would likely be excluded under limited entry. The sale of sport-caught fish might be an alternative option.

4. Some method of future entry into the fishery, in addition to buying one's way in, needs to be developed. Somehow a way has to be found for new fishermen, particularly children growing up in rural areas, to obtain permits without having to buy them at prohibitive prices.

We applaud the Commission's efforts to finally include hand trollers under limited entry and hope these comments prove useful to that end.

Sincerely,

POINT BAKER HAND
TROLLERS ASSOCIATION

Tom Jacobson

TJ/es

Ketchikan Handtrollers' Association
P. O. Box 6237
Ketchikan, Alaska 99901

February 14th, 1980

The Honorable Jay Hammond
Governor
State of Alaska
Juneau, Alaska 99801

Dear Governor Hammond:

In the enclosed material we, the Ketchikan Handtrollers' Association, have clearly outlined our case and our position. Handtrollers are old people, young people, pioneers, students, businessmen, professional fishermen and Alaskans. There is just no moral or legal way way the Board of Fisheries can be allowed to systematically force us out of business. We are a part of Alaska's past, present, and future and we are just simply not going to fade away.

We ask you at this time to instruct the Board of Fisheries to repeal all time and area closures applicable only to handtrollers and also the four line-two line gear restriction. Furthermore, we ask that in the future the Board of Fisheries adopt policies which will manage and protect our fisheries resources in an equal and unbiased manner. After all, it is the responsibility of the Board of Fisheries to protect and manage the resource for the highest sustained yield, not to decide who lives or dies in the commercial fishing business.

Sincerely,

John Trout, President
Ketchikan Handtrollers' Association

enc.

A professional handtroller's view

To the Editor:

I am concerned as to the impact of many existing and proposed regulations on those of us who are 'professional' handtrollers. In my own case, I am an independent Alaskan businessman with a substantial gear and vessel investment, a family of four and a 100% income dependency on the handtroll fishery. Having sold our home and fished for 3 seasons we have afforded ourselves a suitable trolling vessel. If we are allowed to earn a reasonable living in the next two seasons we will have saved enough money to buy a permit and enter the power troll fishery. Of what practical use is an 'entry level fishery' if the income opportunities do not provide a means for this type of advancement?

The proposed two-line limit will have a negligible impact on the smaller boats, weekenders, etc., while the larger boats, and again, those with the largest investments, putting forth the greater effort will suffer the greatest hardship.

If you must limit the units of gear, then do it, but at least lot some of us continue to fish at our present income producing capabilities. Reducing several hundreds of self-supportive businessmen to welfare by cutting their income potential in half (again) is not my idea of an acceptable solution.

— —ith.

Handtrollers get business support

Individuals representing at least 24 businesses and the city mayor in Ketchikan have signed a petition endorsing the efforts of the Ketchikan Handtrollers Assn. in its legal challenge to fisheries management orders by the State Board of Fisheries.

The petition cites the Ketchikan group's "significant contribution" to Ketchikan's economy, and states that "protecting the viability of all fishery groups is a matter of public concern."

John Trout, president of the Ketchikan Handtrollers Association, in a recent letter to the American Civil Liberties Union, asked its help in determining the legality of the State Board of Fisheries' allocation of resources and its proposed gear restrictions for handtrollers.

The association is asking whether it has a basis for a legal challenge under restraint of trade and discrimination provisions of laws and the state and federal constitutions.

The handtroller letter states that there are about 2,100 active handtrollers and about 900 active power trollers, yet power trollers are allocated 80 percent of the total troll catch.

Handtrollers may challenge state fishery policies

KETCHIKAN (AP) — The Ketchikan Handtrollers Association is considering a legal challenge to fisheries management orders by the state Board of Fisheries, a member said Thursday.

Mark Wells of the association said the group, with about 20 active members, will contact the American Civil Liberties Union about a possible legal challenge.

"We want legal help from the ACLU regarding questions such as can the state protect and favor (one group of fishermen) by the allocation of the resource at the expense of another," he said. Also questioned by the handtrollers are proposed gear line limits.

Wells said the association wants to find out whether it may have a basis for a legal challenge under restraint of trade and equal protection provisions of laws and the state and federal constitutions.

Handtrollers asking A.C.L.U. for legal aid

EDITOR, The Daily News:

"We've got to hang on to all the rights we can!"

Ketchikan handtrollers report they are in contact with the American Civil Liberties Union seeking legal help in their fight for survival. Among questions being asked by the handtrollers are :

—Is it legal for the State of Alaska to protect and favor, by enforcing allocation of a resource, one group of fishermen at the expense of another?

—No other gear type under the limited entry system is allocated a portion of another gear type's catch. Is this restraint of trade?

—Is it legal for the State of Alaska to inhibit the productivity of, and thereby suppress the incomes of, several thousand handtrollers in order to affect allocation of 80 percent of a fishery resource to 900 power trollers? Is this discriminatory?

In the communicaton being prepared for the ACLU, handtrollers also state: "Handtrolling means different things to different people. A profession, a livelihood, a way of life, a student's summer job, the local economies of several small communities, etc. We feel that earning a living in this traditional fishery is a civil right, and that the practices of the Board of Fisheries which violate that right are not in accordance with the concepts of existing discrimination and trade laws."

John Trout, President
Ketchikan Handtrollers Assocation

Letters from Readers

Handtrollers protest

EDITOR, Daily News:
American Civil Liberties Union
630 W. 4th Ave.
Anchorage, AK 99501
Gentlemen:

We have been referred to you by the ACLU office in New York regarding some problems southeast Alaskan handtrollers are having with the Board of Fisheries and the Limited Entry Commission.

There are 2,100 or so active handtrollers and some 900 active power trollers. The power trollers are being allocated 80 percent of the total troll catch and the following are four steps taken by the Board of Fisheries to enforce that allocation.

1. Expulsion of the handtroll fleet from the "prime" coastal fishing zone. (1978)
2. Initiate eight-day-on, six-day-off closures applicable only to handtrollers in many areas. (1979)
3. Reduce the number of lines a handtroller may fish, from four to two.
4. Bring the handtroll fishery under limited entry.

Is it legal for the state to protect and favor by allocation of a resource one group of fishermen at the expense of another?

No other gear type under the limited entry system is allocated a portion of another gear type's fish catch. Is this restraint of trade?

Is it legal for the State of Alaska to inhibit the producitivity of, and thereby suppress the incomes of, several thousand handtrollers in order to effect allocation of 80 percent of a fishery resource to 900 power trollers? Is this discrimination?

The Board of Fisheries contends that the 80 to 20 percent allocation must be maintained, justifying this with dubious references to a "historical" and "traditional" status quo. To quote a newsletter dated Dec. 19, 1979, from the Board of Fisheries, "The policy on which the management plan is based calls for maintaining the historical 80-20 percent harvest ratios within the total coho harvest." The catch records for handtrollers only go back to 1974. The professional handtroll fishery goes back 60 years.

Handtrolling means different things to different people— a profession, a way of life, a student's summer job, the local economies of several communities. We feel that earning a living in this fishery is a civil right and that the practices of the Board of Fisheries which violate that right are not in accordance with the concepts of existing discrimination and trade laws.

We at this time feel an urgent need to challenge the legality of discriminatory allocaton of resources by the state and se legal precedents ensuring the protection of all fisheries and all fishermen from this unjust and dangerous practice.

A timely injunction lifting the four-line to two-line handtroll regulation for the 1980 season would be of enormous help. We have neither the organizational strength nor the funds to bring this matter to court. Indeed, the cost of pursuing justice in our court systems exceeds our means. Any assistance or advice you can offer on this matter will be greatly appreciated.

Sincerely,
JOHN TROUT
President
Ketchikan Handtrollers Assn

PRODUCTS Maaufacturers of Custom Cut Fence Materials · Split and/or Sawed Western Red Cedar

Memo: to regulation review committee From: Hand Trollers

3,4,80

Problem: To the thousand or more hand trollers who make their principle living by fishing; the 2-gurdie law is the last straw. To these people this law is not just a restriction, but a force that is breaking their way of life that historically is thousands of years old. To them it threatens their life itself.

Reasoning: Because it is a law does not make a law right nor good nor just; It only makes it legal. To have a Democracy every citizen has not only the right but the duty to question and contest any law he thinks unjust. For this reason some of the hand trollers have come to this meeting.

The various injustices of limited entry have been rehashed many times and most have been accepted as the lesser of 2 evils. However the restrictive law prohibiting a livelihood within the hand troll fishery is intolerable if a person qualifies otherwise for a limited entry permit.

The cost of fuel and other expenses are the same for 2 gurdie fishing as for 4, but that expense must be taken from

half the opportunity to catch fish. Also the hand troller finds himself holding the bag having paid for twice as much gear as he is allotted to use.

Answer: In the qualifying point system let there be two types of permit, One for those who make all their living from fishing allowing 4 gurdies, and one for those who have other income to be allotted only 2 gurdies.

To provide for a future younger generation of fishermen, let there be no ownership nor sale of permits, but let them return to the commission to be applied on a first come - first served basis to a list of new applicants.

No one should be allowed a permit unless he fishes the permit.

Finally: As a personal request I would like the Governors office to review and shorten the 5 year residency moratorium on a fisherman loan if he qualifies in all other respects with the loan association.

Respectfully yours

Entry R. Sarff

P.O. Box 1312
Wrangell, Ak.
99929

Gentlemen:

I moved to Wrangell three years ago after living ten years in Fairbanks. I moved to Wrangell with the sole purpose of somehow getting into the commercial fishing industry. I chose hand-trolling which, at that time, seemed to be a viable and reasonable means of support. And indeed, it was. AT THAT TIME.

I fished the first year from a 14 foot skiff with two down-riggers and a fishing rod. My production from this skiff and especially the production from larger hand-troll boats convinced me that I could make a living within this fishery. At that time, the hand troll fishery was considered to be "an entry level fishery." Meaning that you could make enough money for a living and gain knowledge enough to go onto something more lucrative, if you so chose.

The next spring, I invested about $10,000, most of it borrowed, into a 28 foot troller.

That year, my second, I sold about $8,000 worth of fish. I began the season with only two lines and worked my way up to four, buying the other gurdies and line as I could afford them. I fished steadily from the first of May into late October. It was that year that hand trollers were prohibited from fishing in outside waters. This didn't bother me because I had no intention of going out there anyway. In fact, this regulation encouraged me because I, of course, had heard the talk that "they" would be restriciting the hand troll fishery (because the powerrtroll fishery was complaining that there were too many hand-trollers). I was encouraged because I thought, "WEll, here is the restrcition--- the power trollers now have the best fishing grounds and I wasn't planning on fishing there anyway--- so this restriction does not alter my outlook on the possibility of making a living." Further, I thought that this was probably enough of a concession to keep them off our backs. hey have the best fishing ground, what more could they want? At the time, I even thought that maybe this regulation was fair and honest because, after all, they did have larger investments and expenses than hand-trollers. And maybe they should have an advantage. And maybe when I got a power troll licsense, I would feel the same way. In the meantime, I knew it was still possible to make a living fishing the inside waters. You certainly wouldn't get rich but you could at least make a living at it.

The next year saw even more restrictions for the hand-troll fishery. Specifically, the 8-on, 6-off closures in certain areas. None of these were areas in which I fished, so I still figured I could make a living although I knew that these closures would probably put more pressure on the areas where I did fish. Still, that year, last year, I improved my business to a gross sale of $16,000 and was, by then, totally convinced that even with these additional restrictions, I could still earn a living. Surely, it seemed that we in the hand troll fishery had been penalized enough with these two major restrictions in as many years. Surely, in such a short period of time, there would be no more major restricitions. We could still make a living, however reduced.

And now, now the Board of Fisheries tells us that this year we may use only two lines.

The Board gives us two or three months notice that our gear has been cut in half!

The Board gives us two or three months notice that our already marginal incomes are to be cut by at least 1/3.

The Board gives us two or three months notice that we are no longer engaged in a fishery that can provide us with a reasonable chance of making a living.

The Board gives us two or three months notice that hand-trolling is no longer a commercial fishery but merely some kind of expensive hobby to be enjoyed by those who can afford it. By reducing hand-trolling to merely two lines, the Board immediately and casually eliminates the so-called professional hand-troller and reduces the fishery to a mockery of what it was just two and three years ago. The Board has made a mockery out of the profession we have chosen, ~~with the Board's previous blessing~~, and we feel, understandably I think, cheated.

Let us take an honest look at the hand-troll fishery. Basically, as a commercial fishery, it is a dishonest fishery in that most people who hold and desire hand-troll permits have no intention of making a living at it. These people, and they are in the majority it seems, have other sources of income and view hand-trolling as a pleasant pasttime with which to supplement their incomes. We can go further. There are many people holding hand-troll permits who do not need or even want income from them. With the permit, which costs $40, and with two or three fishing rods, which they would own anyway, the hand-troll permit provides them with a convienient, and legal, method of tax evasion. With an investment of less than one hundred dollars they are able to write off a $50,000 boat as a business expense.

This, perhaps, is common knowledge, but must be mentioned so that the other side of the coin may be more clearly seen.

The other side of the coin is this: Hand-trolling may also be, and has been for a lot of people, a very honest way commercial fishery. There are those of us who go at it full-time, those of us who try to make most, if not all, of our yearly income from hand-trolling. There are those of us who declare this income and pay taxes on it instead of receiving a tax benefit. We entered this fishery with an honest desire to make a living at it and indeed, the State encouraged us by referring to hand-trolling as an "entry level fishery."

We now contend that given the stringent restrictions of the last two years, and especially with the introduction of a two line limit proposed for this year, hand-trolling is no longer a viable means of support. It no longer qualifies as an "entry level fishery" but rather has been made into a subtle form of tax evasion encouraged by the Board of Fisheries ~~and the~~ with their two-line limit, which, by defintion, separates the serious hand-troller from the fraudulent hand-troller.

We, the professional hand-trollers of South-east Alaska, we who have improved our efforts and our businesses into something that can support us, probably number no more than three or four hundred permits. We wonder if it was the Board s intention to take our livlihood from us. We trust not.

We recognize the problems facing the Board in dealing with the question of limited entry within the hand-troll fishery. We wonder if the Board recognizes our problem of making a living within the hand-troll fishery. With this latest restriction of just two lines, we think not. We believe that the Board has the responsibility of looking out for our intersts as well as for the intersts of the salmon stocks. We, who entered the fishery in good faith and performed and conducted ourselves as commercial fishermen, now feel abandoned by those who would govern us. We question their ~~intelligence~~ judgment. We question their motives. Most of all, we question their compassion for those of us financially dependent upon hand-trolling.

We ask the Board to reconsider its decsion to limit, with such short notice, our gear to two lines. We ask the Board to search within its own conscience to determine if there are not some of us entitled to certain "grandfather rights"; specifically, the right to fish with the same gaer in 1980 and in future years as we have been permitted to do in the past.

We ask that the four line limit be somehow worked into the limited entry program for hand-trolling. Since we are a divided fishery---divided between "serious" and, for lack of a better word, "amatuer" fishermen, we ask that this distinction be made when the limited entry permits are ~~fiannly~~ finally issued.

We propose that the Board issue two classifications of hand-troll permits. Let us refer to them as Class A and Class B permits. For a Class A permit, we ask the Board to determine, through fishing receipts and tax records available to them, the number of people dependent upon hand-trolling for a substantial proportion of their income. We ask that these people who have demonstrated a desire and ability to earn a living by hand-trolling be issued a Class A permit allowing them to fish four (4) lines and to be governed by the rules and regulations pertaining to its sister fishery, the Power Troll fishery. We merely ask that the recipients of a Class A licsense be selected in such a way that those people most dependent upon the fishery for their livelihood, receive them.

The Class B licsesne shall be distinguished by a 2 line limit and whichever of the current hand-troll regulations the Board deems necessary to retain.

We believe that this proposal best represents the interests of those involved in this controversy. Therefore, it reflects the best application of ~~the~~ democratic principals. A Class A licsense protects those who have entered the fishery with the intention of making a living at it. A Class B licsense will satisfy those who are looking for entertainment and a tax write-off. Hopefully, with the addition of a "use it or loose it" clause, Class B permits will someday be in the hands of those who wish to enter into commercial fishing.

Finally, we hope that this proposal represents the desires of the Board, which, it seems, should be to find a way of controlling the fishery without putting out of business those who are dependent upon it. The Class A and Class B proposal allows the Board to regulate exactly the number of hand-troll lines in the water while still issuing a maximum number of permits.

We are grateful for the chance of being heard by this special committee. It has done much to restore our faith in the democratic process, a process, which lately, we, as fishermen, have become skeptical of. We recognize the need for commercial fishing regulations. However, we do not believe that at this point in time the salmon stocks are so depleted and so desperate as to warrent a reaction by the Board which so severely restricts our ability to earn a living. We ask this committee to convey this feeling to the Board. We ask this committee to consider the closenesss of the 1980 fishing season and to consider the finanacial impact of being informed, with only two or three months notice, that your gear is being cut by 50%. ~~We ask this committee to convey our feelings and situation to the Board of Fisheries.~~ We ask this commiteee to reccomend that the proposed two-line limit for 1980 be lifted until a more reasonable and equitable solution can be found.

Thank you,

Ron Rau

Ron Rau

MY NAME IS TOM JACOBSON. I'M FROM PORT PROTECTION, A SMALL FISHING VILLAGE NEAR PT. BAKER ON PRINCE OF WALES ISLAND. MY SOLE SOURCE OF INCOME FOR THE PAST 6 YEARS HAS BEEN FROM HANDTROLLING. I'M HERE REPRESENTING THESE SOME COMMERCIAL HAND TROLLERS IN THE VILLAGES OF PT. BAKER AND PORT PROTECTION, CENTERS OF CONTINUOUS HAND TROLL ACTIVITY FOR OVER 50 YEARS. THE POINT BAKER HAND TROLLERS DEPEND ALMOST ENTIRELY ON OUR H-T INCOME FOR OUR SURVIVAL, THERE BEING NO OTHER VIABLE ALTERNATIVES IN OUR SMALL ISOLATED VILLAGE. ~~ALTHOUGH OUR~~ ALTHOUGH OUR INCOMES ARE RELATIVELY MEAGER, THEY HAVE BEEN SUFFICIENT TO SUSTAIN AN ADEQUATE STANDARD OF LIVING. HOWEVER, REGULATIONS DESIGNED TO DENY US THE RIGHT TO FISH TRADITIONAL ~~FISHING~~ GROUNDS (SUCH AS THE CLOSURE OF OUTSIDE WATERS), REGULATIONS TO REDUCE OUR GEAR BY 50% (THE NEW 2-LINE LIMIT), AND PROSPECTS FOR STILL MORE RESTRICTIONS ~~PROPOSED~~ TO COME WILL HAVE A DISASTROUS EFFECT ON THE SOCIO-ECONOMIC WELL BEING OF OUR COMMUNITY. NOT HAVING THE TYPE OF VESSELS OR THE CAPITAL REQUIRED FOR PERMITS AND GEAR IN ORDER TO ENTER A DIFFERENT FISHERY, WE WILL FACE THE PROSPECT OF LEAVING HOMES AND FAMILIES TO SEEK EMPLOYMENT IN TOWN OR SUCCUMBING TO PUBLIC ASSISTANCE. IF ALL THIS WERE THE RESULT OF THERE BEING NO MORE SALMON IT WOULD BE A REGRETTABLE BUT UNDERSTANDABLE CIRCUMSTANCE BUT MAN, ALL THIS IS THE RESULT OF INSENSITIVE

AND HEAVY-HANDED ACTIONS ON THE PART OF THE
STATE BUREAUCRACY, HANDICAP BY USING HANDTROLLERS
AS THE SCAPEGOAT FOR PROBLEMS UNRELATED TO OUR
CATCH OF FISH. LET'S PUT THIS SITUATION IN PERSPECTIVE.
IN 1978, THE YEAR OF HIGHEST HT OPENING, ALL
HANDTROLLERS OF THE SALMON CAUGHT IN
SOUTHEAST ALASKA, ONLY 3.1% WERE CAUGHT BY
HANDTROLLERS, ACCORDING TO FISH & GAME STATISTICS.
AND LAST YEAR, BOTH THE NUMBER OF HT
PERMITS FISHED AND OUR PROPORTION OF CATCH DROPPED
EVEN LOWER. WHILE HANDTROLLERS ARE BEING SUBJECTED
TO CLOSURES OF OUTSIDE WATERS AND TIME RESTRICTIONS
ON CERTAIN INSIDE WATERS, A 50% REDUCTION IN GHL,
AND MORE RESTRICTIONS PROMISED TO COME, THE POWER
TROLLERS ARE REMAIN TOTALLY UNAFFECTED. THEY MAY
CONTINUE TO USE 4 LINES AND FISH WATERS NOW CLOSED TO
HANDTROLLERS ONLY. PURSE SEINING AND GILLNETTING
WILL CONTINUE IN AREAS AND DURING TIMES WHEN
HANDTROLLERS CAN NOT FISH. THE GROUP OF FISHERMEN
WHO HAVE BY FAR THE LEAST IMPACT ON THE SALMON
RESOURCE AND CAN LEAST AFFORD FURTHER ECONOMIC HARDSHIP,
HANDTROLLERS ARE RECEIVING THE FULL BRUNT OF THE
STATE'S PUSHING RESTRICTIONS, WHILE
SALMON FISHERIES. FOR THOSE FISHERMEN WHO HAVE HAD THE
GREATEST IMPACT ON THE STATE RESOURCE ARE BARELY
CAN CONTINUE FISHING, BARELY EFFECTED. CLEARLY
HAND TROLL RESTRICTIONS ARE
NOT CONSERVATION MEASURES BUT ARE UNWARRANTED MANIPULATION
OF THE LIVELIHOOD OF ALASKAN CITIZENS. ELIMINATION
OF SMALL INDIVIDUAL ENTERPRISES WITHOUT JUSTIFICATION

OR COMPENSATION.

WE WISH TO UNDERSCORE THE FACT THAT THE PT. BARON HANDTROLLERS SUPPORT AND ENCOURAGE AND SUPPORT ALL MEANINGFUL REGULATIONS THAT WILL CONSERVE THREATENED, ENDANGERED SALMON STOCKS. BUT, WE DEMAND EQUAL TREATMENT UNDER THE LAW. THE TROLL FISHERY MUST BE REGULATED AS ONE FISHERY WITH ALL FISHERMAN SHARING CONSERVATION EFFORTS EQUALLY, AS HAS ALWAYS BEEN TRUE AMONG TROLLERS, FROM THE 70 ODD YEAR HISTORY OF IN PUGET SOUND TROLLING, IT WASN'T UNTIL JUNE 1978, WITH CLOSURE OF OUTSIDE WATERS TO HANDTROLLING, THAT ANY REGULATION WAS MADE WHICH APPLIED ONLY TO ONE GROUP OF TROLLERS. IN THE 4 YEARS PRECEDING THIS DISCRIMINATORY CLOSURE OF OUTSIDE WATERS, HT ACCOUNTED FOR LESS THAN 3% OF TROLL CAUGHT KINGS + COHOS WERE CAUGHT SOUTHEAST BY HT IN OUTSIDE WATERS. YET TO THOSE HT WHO FISH TRADITIONALLY THESE WATERS, IT ACCOUNTS FOR THE MAJOR PORTION OF THEIR INCOME. CLEARLY THIS WAS NOT PRIMARILY A CONSERVATION MEASURE, AS POWER TROLLERS AND PURSE SEINERS WHO ACCOUNT FOR NEARLY ALL SALMON TAKEN IN OUTSIDE WATERS, WERE COMPLETELY UNAFFECTED BY THIS CLOSURE. WHEN THE NORTH PACIFIC MGMNT. COUNCIL SUBMITTED THEIR 1979 TROLL PLAN TO THE SEC. OF COMM. IN WASHINGTON D.C. WITH A PROVISION TO BAN HT TROLLING IN FEDERAL WATERS, THE U.S. SECRETARY OF COMMERCE REJECTED THE HAND TROLL BAN STATING " AFTER STUDYING ALL AVAILABLE INFORMATION, I HAVE DETERMINED THAT NO CONSERVATION PURPOSE IS

SOLVED BY DISTINGUISHING H-T FROM P-T GEAR.
I HAVE DETERMINED THAT THIS MEASURE IS INCONSISTENT WITH THE FAIRNESS AND EQUITY PROVISIONS OF NATIONAL STANDARD 4. THE PROPOSED BAN WOULD ALLOCATE FISHING PRIVILEGES UNFAIRLY BETWEEN 2 GROUPS OF FISHERMEN WHO USE ESSENTIALLY THE SAME TYPE OF GEAR." THE STATE REACTED BY PROHIBITING ALASKAN HANDTROLLERS FROM PARTICIPATING IN THE FEDERAL WATERS FISHERY, EVEN THOUGH IN SPITE OF WASHINGTON'S INSISTENCE THAT HANDTROLLERS ARE EQUITABLE TO FISH THERE. HANDTROLLERS FROM OTHER STATES MAY STILL LEGALLY FISH THESE WATERS.
THE STATE ALLOCATION OF FISHING PRIVILEGES UNFAIRLY BETWEEN 2 GROUPS OF FISHERMEN WHO USE ESSENTIALLY THE SAME GEAR", TO WHICH THE SECRETARY OF COMMERCE OBJECTS, IS PRECISELY WHAT THE BOARD RESOLVED IN ITS POLICY TO ALLOCATE THE COHO CATCH BETWEEN PT's AND HT's ON AN 80% - 20% BASIS. (BY THE WAY, PT's & HT's REALLY DO USE PRECISELY THE SAME GEAR, FROM HOOK TO GAFF-HOOK, FISH THE SAME AREAS, WITH THE SAME STRATEGIES, FOR THE SAME SPECIES. THE ONE AND ONLY DIFFERENCE IS THAT POWER TROLLERS USE MECHANICAL MEANS TO RETRIEVE THE GEAR WHILE HAND TROLLERS USE MANUAL MEANS.) THIS POLICY OF ALLOCATING 80% OF THE TROLL CAUGHT COHOS TO POWER TROLLERS IS THE JUSTIFICATION GIVEN FOR CUTTING THE HAND TROLLER'S GEAR IN HALF, BY THE 2-LINE LIMIT REGULATION, WHILE ALL OTHER SALMON TROLL + NET, WILL CONTINUE TO USE THE SAME GEAR AMOUNT BOTH

FURTHERMORE, IF THE BOARD IS TRULY CONCERNED ABOUT POWER TROLLERS NOT RECEIVING THEIR 80% OF THE TROLL CAUGHT COHOS, HOW WITH DO THEY PROPOSE TO LIMIT US TO 2 LINES 12 MONTHS A YEAR, WHEN COHOS ARE ONLY CAUGHT FROM MID JUNE TO MID SEPTEMBER? AGAIN, THE SMALL PROPORTION OF COHOS THAT HANDTROLLERS TAKE IS NOT JUSTIFIED BY A 50% GEAR REDUCTION IN OUR GEAR ONLY, AND FOR THIS AND CERTAINLY NOT FOR THE 9 MONTHS A YEAR WHEN COHO'S ARE NOT CAUGHT! WHILE IT IS TRUE THAT HANDTROLLERS IN 1979 CAUGHT 204,000 MORE COHOS THAN THEY DID IN 1975, POWER TROLLERS CAUGHT OVER 500,000 MORE COHOS IN 1979 THAN IN 1975. CLEARLY THE EFFORT OF POWER TROLLERS HAS INCREASED MORE THAN HAND TROLLERS, YET IT IS ONLY THE HANDTROLLERS WHO ARE HAVING THEIR CUT BY 50%. THIS IS NOT CONSERVATION BUT SOCIAL AND ECONOMIC GEAR MANIPULATION. THIS UNJUST ALLOCATION POLICY BETWEEN TROLLERS ALSO TORPEDOED THE COMM. FISH. ENTRY COMMISSIONS ATTEMPTS TO IMPLEMENT A WORKABLE LTD. ENTRY SYSTEM FOR HANDTROLLERS. BY DIRECTING THE COMMISION TO LIMIT TO A NUMBER WHICH GUARANTEES THE NUMBER OF PERMITS POWER TROLLERS GATHER 80% OF THE TROLL COHOS, THE NUMBER OF PROPOSED PERMITS BECAME SO SMALL THAT THE MAJORITY OF POPULAR OPINION AT THE COMMISSION'S PUBLIC HEARINGS ON THE MATTER DISAPPROVED OF THE COMMISSION'S PLAN. THE COMMISSION THEN PROPOSED A NUMBER OF PERMITS UNACCEPTABLY HIGH BY THE BOARD'S ALLOCATION STANDARD, WITH THE RESULT THAT EVEN MORE RESTRICTIONS WERE RECOMMENDED ON HANDTROLLERS SO NOW WE HAVE A LTD. ENTRY

POLICY WHICH BENEFITS NO ONE WHATSOEVER, THE ENTRENCHMENT OF RESTRICTIONS WHICH WERE SUPPOSED TO HAVE BEEN IMPOSED ONLY FOR THE INTERIM UNTIL LTD ENTRY WAS ENACTED FOR HAND TROLLERS, AND THE PROPOSAL FOR NEW, EVEN MORE RESTRICTIVE REGULATIONS ON THE WAY.

THE PT. BAKER HAND TROLLERS ASSOC. HAS SPENT COUNTLESS HOURS DEVELOPING WHICH WE DON'T HAVE PUZZLING OVER OUR STATE'S FISHING BUREAUCRACY TRYING TO PLAY IT BY THEIR RULES HOPING TO COME UP WITH WORKABLE SOLUTIONS THAT WILL WORK BY THEIR STANDARDS. MONEY, WHICH WE DON'T HAVE, HAS BEEN SPENT ATTENDING HEARINGS ALL IN THE HOPE THAT JUSTICE MAY PREVAIL. OUR CAREFULLY REASONABLE CONSIDERED, BY THE BOARD PROPOSALS HAVE BEEN POLITELY RECEIVED AND STUDIOUSLY IGNORED WITH THE EXCEPTION OF THE COMMENT. I AM SUBMITTING THE COMMITTEE WITH A COPIES OF THE COMMENTS WE MADE LAST FALL WHEN THE TROLL MANAGEMENT PLAN AND LTP. ENTRY PROGRAM WERE BEING FORMULATED. WE WOULD BE DELIGHTED TO WORK WITH ANY LEGISLATORS ~~DRAFTING BILLS SOME SENSE OF FAIRNESS TO ALL~~ TO DRAFT LEGISLATION TO BRING SOME SENSE OF FAIRNESS TO THIS BUREAUCRATIC JUNGLE. WE HATE TO ONCE AGAIN SEE THE LITTLE GUY SQUEEZED OUT BY THE BIG GUY NEEDLESSLY THRU THE POWER OF OUR STATE GOVT. ESPECIALLY SINCE WE ARE THE LITTLE GUY. THE HOPES AND FUTURES OF MANY FAMILIES AT PT. BAKER AND ELSEWHERE ARE NOW LIQUIDLY IN THE HANDS OF THIS COMMITTEE. ~~OUR LAST HOPE~~ YOUR CAREFUL STUDY AND CONSIDERATION OF THE ISSUES IS OUR LAST HOPE FOR A REASONABLE RESOLUTION OF OUR SITUATION. IT IS DIFFICULT TO PREDICT WHAT ACTIONS INDIVIDUALS WILL TAKE SHOULD THEIR SOLE MEANS OF SUPPORT BE UNJUSTLY TAKEN AWAY.

THANK YOU

PROPOSED ACTION: I recommend that you concur in my proposed action to accept the Council's judgment that the FMP will not contribute to overfishing either the Alaskan or non-Alaskan salmon stocks.

Issue 2: Proposal to Ban a Technique of Fishing Known as "Hand Trolling."

A basic objective of the FMP is to maintain the status quo with respect to fishing effort in the FCZ. The FMP's proposed ban on hand trolling is intended to help achieve this objective. The ban was deemed necessary to prevent hand trollers from expanding into the FCZ and increasing the amount of fishing pressure on stocks that are already fully utilized. The State of Alaska's ban on hand trolling in its offshore waters (i.e., from the outer coast to the FCZ; see Figure 2) is an attempt to control the burgeoning hand troll fishery which increased from roughly 2,000 boats in 1973 to almost 4,000 in 1978. By keeping the growing number of hand trollers from fishing on the fully expoited stocks in offshore waters, Alaska is promoting wise use of the resource and ensuring escapement to the spawning grounds. Permitting hand trolling in the FCZ could negate the beneficial effects of this State measure and create an enforcement problem.

Section 303(b) of the FCMA allows an FMP to "prohibit, limit, condition, or require the use of specified types and quantities of fishing gear . . . ." However, there is little to distinguish hand- from power-trolling gear. The essential difference is that the reels of hand trollers are cranked manually, whereas those on power trollers are cranked by power from the boat's engine. In general, hand trollers operate smaller boats (average length: 22 feet) than power trollers (average length: 35 feet), but some hand trollers have boats longer than 40 feet. Power trollers landed 76 percent of the salmon but made up only 31 percent of the troll fleet. The FMP notes that only five persons hand trolled in the FCZ during 1975-1977.

After studying all the available information, I have determined that no conservation purpose is served by distinguishing hand-troll from power-troll gear. The FCMA requires in National Standard 4, that

> "Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocations shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges."

The ban would apply equally to residents of all States and therefore is consistent with the discrimination clause.

However, although the ban has potential merit by reducing the chance of overfishing and by enhancing enforcement of Alaska's regulations, I have determined that this measure is inconsistent with the fairness and equity provisions of National Standard 4. The proposed ban would allocate fishing privileges unfairly between two groups of fishermen who use essentially the same type of gear. While power trollers who have previously fished off Alaska would be permitted to continue to do so, hand trollers who have previously fished this area would not. A provision which would allow all fishermen who have fished these waters to continue to do so would satisfy National Standard 4.

Deleting the ban on hand trollers from the FMP will not destroy the integrity of the FMP. Optimum yield can still be attained since the FMP gives the NMFS Regional Director authority to make in-season adjustments necessary for conservation and management.

PROPOSED ACTION: I propose to disapprove that portion of the FMP which bans hand trollers from the FCZ.

Issue 3: Limit on the number of power trollers in the FCZ.

The FMP proposes to adopt Alaska's system for limiting the number of power trollers. The Council determined that a limited entry system for the FCZ was necessary to prevent expanded fishing effort and overfishing. The Council determined that alternative means of limiting fishing effort in the FCZ would be either too disruptive to present social and economic structures or too costly to administer and enforce (e.g., a separate limited entry system for the FCZ, or a separate FCZ catch quota).

Presently, there is no restriction on the number of power trollers fishing in the FCZ. Although fishermen may not land salmon in Alaska without an Alaskan limited-entry permit, they can land salmon taken off Alaska in Washington, Oregon, and California. A small number of power trollers presently do so. Because of increasing restrictions off Washington, Oregon, and California, it is likely that additional trollers will seek to fish in the FCZ off Alaska.

The proposal to limit entry maintains a fishing privilege gained by those who have historically fished in the FCZ off Alaska. The proposal does not grant excessive privileges to particular groups. The FMP provides that any power-troll fisherman who does not have a State of Alaska power-troll permit is entitled to a Federal entry permit if he can show that he fished in the FCZ in any one of the base years of 1975, 1976, or 1977. Unlike the State permit, the Federal permits would be nontransferable. If a holder of one of the Federal permits should retire from the fishery, that permit would be retired from the fishery.

Gentleman of the Board.

Included here are some of my thoughts and accusations toward the regulatory practices of the Dept. of Fish and Game.

I have trolled since 1970 and am totally dependent on salmon trolling for my yearly income.

- I basically question the Integrity, Justice, and Honor of the Dept. of Fish & Game.
- I challenge the Dept. of Fish & Game's right to make law or regulation, pertaining to the use of privately owned vessels; especially with questionable management and resource data.
- I question the way and means by which the Dept. of Fish & Game drafts and institutes certain regulations, i.e. without proper time to respond or public hearing on certain subjects.
- Continual disregard for property and livelihood of dependent fishermen in the industry.
- Dept. of Fish and Game drafts policy with delusion that all trollers are law breakers and will stop at nothing to eliminate the last salmon in the sea.
- In the past, I have volunteered personal fishing information, to the Dept. of F. & G. Only to have

what I considered information substantiating our right to fish, twisted into justification to curtail the trolling effort. I will not communicate with ADF&G under these circumstances.

- My concern for the resource, that the stocks remain strong throughout the coming years, is of utmost importance. Like any person involved in a farming industry, we must deliver a quality product and make our ends meet financially.

- The ADF&G seems to quick to point an accusing finger at the troll industry, for problems the Dept. has trouble substantiating or identifying.

- I have lost sleep, working time (60%) in 1979, and 25% of my off season, these past few years. My efforts have had little or no influence on ADF&G policy. The regulations are making it almost impossible to operate as a businessman. I cannot emphasize enough, underlying Dept. policy is to reduce the smaller southeast Alaska troller to poverty. Thus forcing him or her into a soup line or other financial dilemma. In most cases in the bush, there is no alternate occupation.

My patience has been strained to the end and

my character slandered by ADF&G Regulations. If in the Departments mind, we as trollers have no credibility; than I believe it is fair to assume the same of the ADF&G.

These are just a few of the things that are lodged in my mind. I hope I will be able to communicate with anyone responsive to this predicament. I Sincerely thank the Senators and Representatives responsible for this opportunity. I have included notes and letters I feel shed a little light on this situation.

Again Sincerely,

Larry S. Smith

Larry S. Smith
Box 3020
Juneau, ak. 99803
789-9923

P.O. Box 3020
Juneau, Alaska 99803

January 11, 1980

Mr. Carl Rosier
Deputy Commissioner
Program Management
Department of Fish & Game
Subport Building
Juneau, Alaska 99811

Dear Mr. Rosier:

This is personal testimony regarding a regulation change proposal by the Alaska Board of Fisheries. The regulation states:

> 3. Establish a vessel registration system for hand and power troll vessels, designate procedures for registering troll vessels, prohibit a vessel from being registered as both a hand troll and power troll vessel and establish an effective date and a registration deadline.

We have had no public hearing on a matter of this magnitude, directly affecting our very livelihoods, and I demand that the public be informed of this regulation and a public hearing be set before any action be taken.

Also, the Department should show just cause for such a regulation. My conversations with representatives of the Department of Fish and Game have failed to provide a reason for this regulation.

I will comment more on this subject as information becomes available.

Thank you.

Sincerely,

Larry S. Smith

cc: Governor Jay S. Hammond
Lt. Governor Terry Miller
Senator Bill Ray
Representative Mike Miller
Representative Jim Duncan
Commissioner Skoog
Juneau Advisory Board
Editor, Juneau Empire

JAY S. HAMMOND
GOVERNOR

TERRY MILLER
LIEUTENANT GOVERNOR

STATE OF ALASKA
LIEUTENANT GOVERNOR
JUNEAU

January 16, 1980

Mr. Larry S. Smith
P. O. Box 3020
Juneau, AK 99803

Dear Mr. Smith:

Thank you for sending me a copy of your January 11, 1980 letter to Mr. Carl Rosier, Deputy Commissioner, Department of Fish and Game. I appreciate your bringing the matter of this regulation to my attention. I have contacted the Board of Fisheries and have sent them a copy of your letter. They have informed me that the Board has taken no action on this proposed regulation. At this point in time, they are soliciting written comment and your letter will become part of their file. If you wish to make further comment (pertaining to this particular proposed regulation), I was informed that you must submit written opinions to the Board of Fisheries, Subport Building, Juneau, Alaska 99811 by 4:30 p.m., February 1.

After public hearing is held on these regulations, changes may be made by the Board of Fisheries in conjunction with the Department of Law and the regulations will be drafted into a more permanent format. After complete review, they will be forwarded to my office for filing and for subsequent publication in the Alaska Administrative Code. I would be interested in your comments concerning these regulations after the public hearing phase.

If I can be of any additional assistance in this matter, please let me know.

Sincerely yours,

Terry Miller
Lieutenant Governor

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE ALASKA BOARD OF FISHERIES

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Alaska Department of Fish and Game, under authority vested by Alaska Statutes 16.05.251, 16.05.270, 16.05.475, and 16.05.690, proposes to adopt, amend, or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret, and make specific the provisions of Title 16, Alaska Statutes.

Regulations to be the subject of the Department's action concern commercial salmon troll fishing in the Southeastern Alaska and Yakutat areas.

The Department may adopt, amend, repeal or take no action on the proposed regulatory changes listed in the following informative summary.

1. Management Plan for the Yakutat and Southeastern Alaska Chinook and Coho Salmon Troll Fisheries. This management plan will establish the manner in which the Department will make inseason adjustments of time and area closures to achieve escapements and distribution of harvest of chinook and coho salmon to inshore areas of Southeastern Alaska.

2. Increase or decrease the number of trolling lines that may be operated from hand and power troll vessels.

3. Establish a vessel registration system for hand and power troll vessels, designate procedures for registering troll vessels, prohibit a vessel from being registered as both a hand troll and power troll vessel and establish an effective date and a registration deadline. If in FUTURE, there are areas open or closed to hand and not power, or vise versa, ? Collingsworth Jan. 3, 1980 Kosner

4. Require that the heads of all chinook and coho salmon must remain attached to the body until the salmon are sold.

5. Prohibit salmon fishing with troll gear in an area closed to coho fishing when coho salmon are on board the fishing vessel.

Making Regulation on trollers for future planned area closures and gear discrimination

Copies of proposed changes in regulations summarized in this notice may be inspected at any Department of Fish and Game office or may be obtained upon request by writing to the Department of Fish and Game, Subport Building, Juneau, Alaska 99801

Notice is also given that any persons interested may present written statements or arguments relevant to the action proposed in this notice. Written comments received at the offices of the Alaska Department of Fish and Game, Subport Building, Juneau, Alaska 99801, before 4:30 p.m. February 1, 1980 will be considered.

The Alaska Department of Fish and Game, upon its own motion or at the instance of any interested person, may thereafter adopt, amend, reject, supplement or take no action on the proposed regulations without further notica.

Date: _____

Ronald O. Skoog, Commissioner
Alaska Department of Fish and Game

(OVER)

FAST Commissioner
15 years ago.

Sept 8. Telephone w/ Sen. Bill Ray – "Commissioner of Fish & Game stated the Dept. policy toward Trolling was to eliminate the fishery."

Phil Rigby (Bottomfish Fish & Game) "Dept. can't ~~Allot~~ Regulate stocks with Troll fishery harvesting mixed stocks on high seas (Troll should not be allowed to fish mixed stocks because of regulatory practices")

Dave Cantillion (Commercial fish) Aug 25th "We will open days Straits corridor for a week, look at figures, and decide what to do. (announced closure one day after opening with no effort to recover stats – Sept. 1 '79')

Nov. '79' NPMC hearings – Bill Beaver (Fish Biologist – Stapp Law Off.) found [doctored] 10% of real [total] Coho escapements for Chilkat Coho run. Made public issue at hearing. Was passed a note from Dept. person stating. "No one in Juneau office knows how to read figures." (only response)

– Don Bennett – Chairman –
Ed Dankworth
Jorge Holman
Carl Foreman – Vice Chairman – Rm 515 465-4993 4937
Charlie Parr
Mike Beans

March 4th 7 o'clock Capitol Bldg.

Greg Cook exec. director Boards of Fish 465-4110

Kim Elton Lt. Governors office

The fish get all the benefit in the doubt without any regard for the fishermen.
Regulation without reason
Regulation on people and gear instead of managing the resource
Where is fish enhancement? ← ADF&G spends lots to police us, why not strengthen runs.

Take issue in public with Dept. regs. & policies
TV time KINY
Why accept Reg. (Future)

Proposal 2 gurdie or 4 sport pole limit.
Chuck Porter
John Trout
Kenny Proctor
Bill Stokes

ADFG Protection Budget Cuts
"1 line 2 gurdie" limit will force pole fisherman to upgrade to gurd. 2 thus making fisherman more efficient and putting more pressure on stock
"4 line 2 gurdie hand troll gear classification
Legal gear for it be four line whereas two lines only may be attached to gurdies."

GENERAL PROVISIONS NO Public HEARING

5 AAC 39.270 TROLL SPECIFICATIONS AND OPERATIONS

(c) Each vessel engaged in power trolling shall display its permanent Department registration number (ADF&G number) in permanent symbols of black on a white background. Each number shall be at least twelve (12) inches in height, with lines at least one inch wide, and shall be permanently affixed and displayed plainly visible and unobscured on both sides of the hull or cabin at all times.

(d) Each vessel engaged in hand trolling must display the letters HT in permanent block letters on both sides of the vessel. Each letter must be painted in a color contrasting with the background, at least four inches in height, at least one-half inch in width, and permanently affixed on both sides of the vessel hull or cabin, plainly visible and unobscured at all times. No hand troll vessel may display its permanent department registration number (ADF&G number) in any location other than on the vessel license plate.

"Enforcement justification: (STATED PRIVATE Board of Fisheries hearing - BARANOF) It will make it easy for us to police fishing grounds from an airplane."

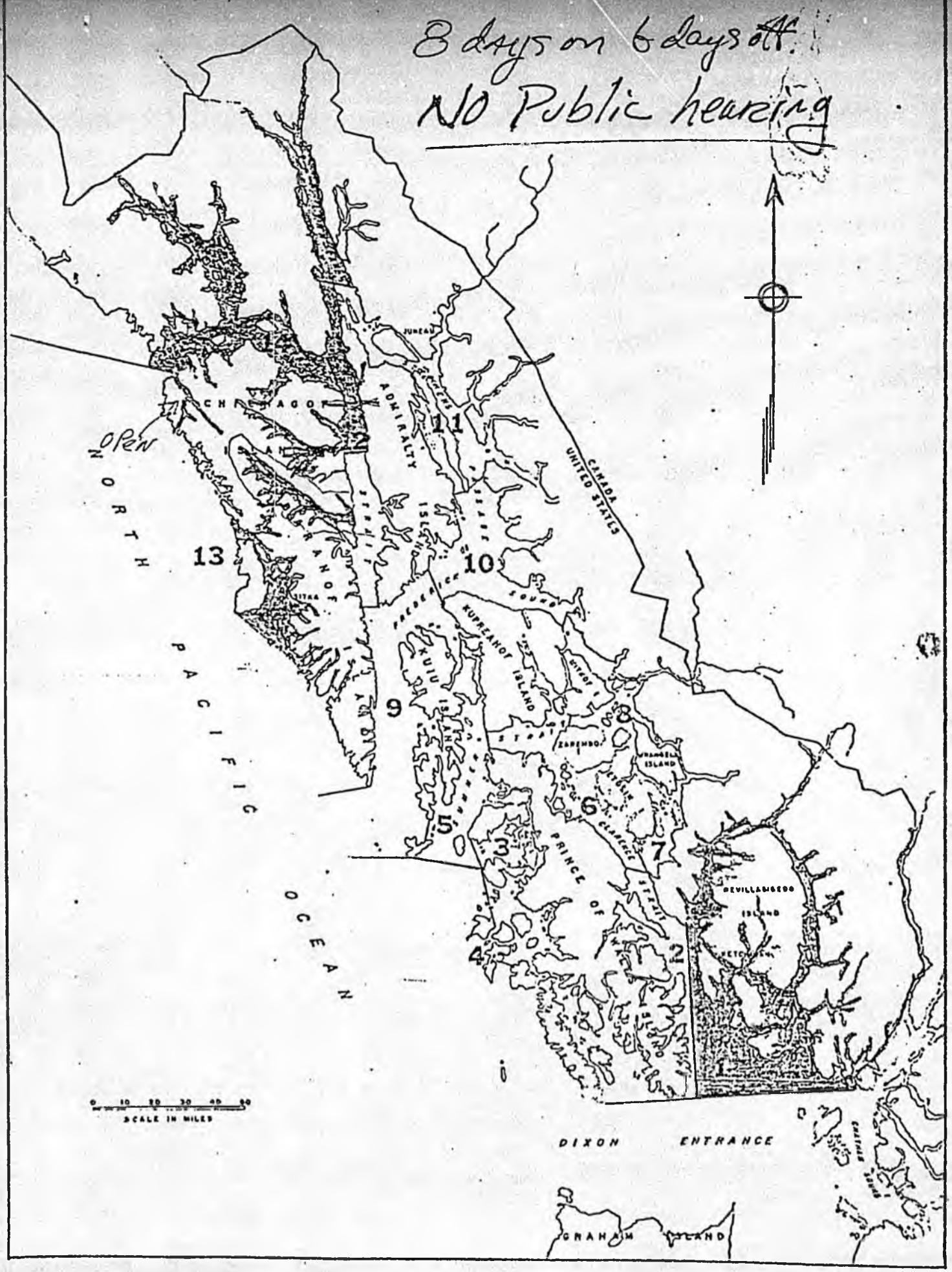
5 AAC 48.090. SPORT FISHING FROM A COMMERCIAL SALMON TROLL VESSEL.

No person may sport fish from a commercially licensed salmon hand troll or power troll vessel, as those vessels are identified by the marking requirements of 5 AAC 39.270 (c) and (d), in any area except that this prohibition does not apply:

(1) to charter vessels as defined in 5 AAC 72.040 (27); and

(2) in derby areas during derbies authorized by the department.

01 adopted 1-15-79


8 days on 6 days off.
NO Public hearing
Open
NORTH PACIFIC OCEAN
CHICAGO
ISLAND
ADMIRALTY
JUNEAU
CANADA
UNITED STATES
SITKA
KUIU ISLAND
KUPREANOF ISLAND
ZARemBO
WRANGELL ISLAND
PRINCE OF WALES ISLAND
KETCHIKAN
DIXON ENTRANCE
GRAHAM ISLAND
1
2
3
4
5
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7
8
9
10
11
13
SCALE IN MILES

(1) I believe these two letters have content that should be brought to the boards attention. It does express a growing concern of the fisherman.

Box 6181
Ketchikan, Alaska
99901

October 18, 1979

Alaska Board of Fisheries
Alaska Department of Fish and Game
Subport Building
Juneau, Alaska
99811

Dear Sirs:

We have a problem. The problem had better be looked at, talked about and taken care of before it gets too big to do anything about. The problem is hatcheries and the role of the Board of Fish and ADF&G. To refresh everyone's memory and maybe to educate a few, I was one of the three people who started what has become known as SSRAA. In those days, we had an ide listic dream that we were going to help Mother Nature and help our resource by building back our once great salmon runs. This idealistic dream led us down a primrose path that has now turned into an impenetrable bunch of thorn bushes that I am afraid we are all going to get stuck on. In fact, we are already starting to get stuck on them.

In the beginning, our dream was to help Mother Nature and the natural runs of fish. Our sole purpose was to build up the natural runs, not to create any unnatural runs or any hatchery stocks. We had this plan that we would have some nice, simple plywood boxes with a good water supply, find out from ADF&G which creeks were low, and go to those creeks and get eggs. We would then bring them back for incubation during the winter time and then return those fry to the same creeks. Everything would go on in its own natural way, except for our small part in helping winter survival. The Commissioner of ADF&G, who at that time was James Brooks, and several people in ADF&G told me that the ADF&G was in the business of managing natural stocks and was definitely not going to have anything to do with the management or protection of hatchery stocks. According to these people, the private, non-profit aquaculture system that we were setting up would be on its own, which was the way we wanted it. There would be no guarantees to the aquaculture groups.

Well, SSRAA has turned into a political, bureaucratic monster, and the plywood boxes have turned into a concrete monument. Now the ADF&G, the Commissioner, and the Board of Fish deem it necessary to play "god" and manage our resource for hatchery stocks, guaranteeing the hatcheries their brood stock. I think that the Department has no business in this sort of management. The ADF&G is soley to manage the resource from a biological standpoint, not from a political standpoint. It has definitely become political.

The latest example of this political management versus sound biological management is what has just happened in the judgement sent down by the Board of Fish through the Commissioner to the Department regarding Disappearance Creek in Cholmondeley Sound. This area is our one and only viable fall run which comes through every year. Cholmondeley Sound provides a fall fishery sometimes and always can be relied on for summer production. Disappearance Creek is a beautiful system. The water temperature is very stable in the winter time, and the creek has a welling condition with the water coming through the gravel, which is perfect for chum salmon. I don't think that anyone should be tampering with it. I am sure if you look at it from a biological standpoint, which is the way that the ADF&G should be looking at it, you can do nothing but agree. At any rate, the Board of Fish decided that the standard 30,000 escapement would have to be upped to 40,000 so that SSRAA could get a guarantee for brood stock. How can the Board justify such a reallocation of an established fishery.

This type of political decision is very unhealthy, and I can see no good coming from it in the future. I can see it going from this as a start, to protecting hatchery fish as they come through the fishery, protecting hatchery fish as they near their destination and guaranteeing that the hatchery will get their escapement. This means nothing but more closures for the fishermen, less fishing area and less fishing time as we get deeper and deeper into political management.

It is a sad thing to see such a beautiful dream of helping Mother Nature turn into such a political, bureaucratic monster. I don't know where we went wrong, but I guess one thing led to another. Now it is kind of like a snowball going downhill. Somewhere we have to stop that snowball and either break it up or melt it to where we can deal with it.

The Department must get back into biological management and do what it is supposed to do best. They need to start thinking about the good of the natural runs and not about unnatural runs. The natural runs are the strong ones, anyway, which has been proven many times. I would hate to see the State of Alaska end up with the same situation they have down in Washington and Oregon where all they have are hatchery fish. These states are relying on these unnatural runs for their fisheries. We have a good stock up here of natural runs, and I think that they are the ones that should be taken care of. You don't manage a fishery for the fishermen. You are supposed to manage the fishery biologically for the fish. You certainly aren't supposed to be managing it for the hatcheries.

Sincerely,

Larry Painter

Larry Painter
Commercial Fisherman
F/V Alsek

(2)

Box 6181
Ketchikan, Alaska
99901

October 18, 1979

DEAR FELLOW FISHERMAN:

I am enclosing a copy of a letter I sent to the ADF&G concerning the political management in place of biological management in the allocation of fish to the SSRAA hatchery. As I stated in that letter, I am sorry to say that I was one of the people responsible for the beginning of SSRAA. It seems that the beautiful dream that we started has backfired. What was started out to help our fisheries resources and to help solidify our industry and earning power has lost sight of its original intent. We are going to end up losing our share to hatcheries. SSRAA has received loans from the State. Therefore, the State must make sure that SSRAA is successful in order to get their loans repaid. We are in a Catch-22 situation. This appears to me to be just the beginning, and I am afraid we are going to lose more and more as time goes by. Profit hatcheries are slowly creeping their way up the coast. Washington state is receiving pressure in this direction. We don't need this kind of hatchery or political management. Also, Jack Milnes, the former director of SSRAA, is now serving as a director on the Renewable Resources Corporation. We are playing against a stacked deck.

You have all received the forms to fill out from the Justice Department concerning the 3% assessment. I want you to think about this very deeply before you make your choice of one of the options. I am not going to tell you which option to select, and I am not going to tell you which option I chose, but I just want the facts to be before you. You should be well aware of what has taken place so far, and the direction it seems to be flowing. We certainly don't need more regulations, more politics and more beauracracy involved in our occupations. We have all kinds of trouble in Washington with the Boldt Decision. There is trouble for Washington, Alaska and Oregon trollers on the outside. The 200-mile decision which was supposed to help us out has turned into more politics and more regulation. Everywhere you turn you find the same thing happening. And SSRAA is just another example.

I think that the fishermen are going to have to come to the realization that although we are a bunch of independent, optimistic souls, that we are all akin....that is, we are all interested in one thing, and that is making our living fishing. We are going to have to forget about our gear wars that we have going on, continually looking down our noses at each other and trying to gain over each other.

We must start looking down that long, narrowing road and start walking down it together instead of fighting down it. Now more than ever and in the future more than now, we are going to need some unity. The way we are going now we are pretty weak, because we are all haggling amongst ourselves. The politicians are sitting in the background hamstringing us. We as fishermen need to have a more active part in the shaping of our destiny. We must rise up in a <u>united</u> voice and be heard, rather than sit back and accept decisions handed down by people who are not knowledgable of our problems or the problems of our resource. We do <u>not</u> need political decisions and/or allocations.

We have just lost our fall fishery in Southeast this year. I am not writing this letter due to mere selfish reasons because of the loss of this fishery. There probably wouldn't have been much this year, anyway. There is a good chance that ADF&G won't even attain their escapement, let alone provide 10,000 chums for SSRAA. But the Board of Fish and the ADF&G in Juneau didn't know that, which reflects even more on their lack of knowledge. My reason for writing is that this political allocation is the last straw....the straw that broke the camel's back. Once our back and our spirit is borken, fellow fishermen, we are done.

I don't want to see more regulations, I don't want to see more closures, I don't want our fisheries resources managed by politicians. Biologists have enough trouble, and you are certainly not going to get fairness from political management. I see no reason in supporting SSRAA when they are just turning into an institution which is interested in their own gains. They are turning into a very powerful political force. We don't need that. If we don't watch out, we are all going to be out of business.

I would like to know what you all think about this situation and what you would like to do about it. I would appreciate it if you would put your thoughts down on paper and send them to me. I would also like you to write the Board of Fish your thoughts about them getting in the political ring instead of insuring sound biological management. I hope that there will be enough of you from the different gear types to have some input that will impress the "powers that be" when they receive the letters. Maybe we can start turning the tide before it is too late. Don't sit back, like I know it is easy to do, and like I have at times. Don't figure that "what I say won't make any difference," or, "well, it will take care of itself." I think that it is time that we all start saying something about this problem. What you can say will make a difference. We have to start helping each other. We are on a sinking ship and we have to start bailing. The time is <u>now</u> before it is too late.

Sincerely,

Larry Painter

Larry Painter
F/V Alsek

Box 8888
Port Alexander, Ak
9983

RECEIVED
MAR 11 1980
COMMERCIAL FISHERIES
ENTRY COMMISSION

March 7, 1980

Mr. Bennet,

It has come to our attention that your committee is accepting statements regarding recent handtroll regulations. Fishing is the major source of income for our community, with handtrolling the predominate fishery. We feel that the economic and sociol well-being of our community is in jeopardy if the present 1980 handtroll regulations are not changed. We are submitting the following statements for your consideration.

(1) We feel the two line limit being imposed on handtrollers is unjustified and that this law seriously handicaps the efforts of the full-time commerical fisherman. It affects us in way it never could part-time and weekend fishermen who normally use two lines. Our needs are greater than part-time and week end fishermen and we should not be categorized as such.

(2) We believe the Fish and Game Board's present policy of regulating trolling by dividing it into two groups,(power and hand), is unnecessary and detrimental to trolling in general. Closing the outside coast in 1978, and instituting area and time closures in 1979, (applicable only to handtroll), has caused much of the fleet to be pushed into more limited areas. This has resulted in crowding conditions, unrealistic catch data, and economic hardship.

(3) The Fish and Game Boards ruling, allocating only 20% of the total troll catch to hand troll on "traditional" grounds is not only absurd but poorly disquises the greed and corruption in the allocation of everyone's fish into the hands of a few.

(4) It is our opinion that if Fish and Game feels that limited entry is necessary for the hand troll fishery than limited entry should be instituted in a manner consistant with previous programs in Alaska's salmon fisheries. We fear that if a system of gear, area, and time restrictions are used in place of, or along with a limited entry scheme the hand troll fishery will no longer be a viable commercial fishery. Without a truly comercial handtroll fishery, a vital part in Alaska's fisheries, villiages and bush life as we know it now, will be gone forever.

Respectfully Yours,

Handtrollers of Port Alexander

Bernard P. Oster

Peter O. Kinzey

General Delivery
Gustavus, Alaska 99826
March 17, 1980

Dear Sir:

I live in Gustavus and am starting my fourth season as a commercial fisherman. With the exception of my first season in 1977, 100% of my income has come from hand-trolling. I must support my wife, two children, and make house, boat, and land payments from my earnings as there are very few employment opportunities in thes community. Here are my comments regarding the management of the salmon troll fishery in Southeast.

It appears hand-trollers will be under limited entry within the near future. I supported limited entry because the alternative was to be regulated out of existence. Unfortunately, with the large number of permits to be issued and the bias of the Board of Fisheries against hand-trollers, it appears the full-time hand-troller may still be put out of business.

I attended the Limited entry commission's hearing in Hoona last Fall, and testified in favor of the proposed 1,100 permits. If this number of permits were issued fairly in regards to "hardship" all people who actually depended on hand-trolling as means for income would receive a permit.

The majority of the testimony favored a higher number than the suggested 1,100. I felt part of the reason was the peoples mistrust of the ability of a state agency to fairly issue permits in regard to economic dependency and job availability. Also, many who testified did not seem to realize the alternative to more stringent numbers was more stringent regulations.

It is obvious the majority of testimony state wide would favor no limited entry or a large number of permits, since the majority of present permit holders are part-timers. I had hoped the commission would reach a decision which would favor the person who hand-trolls for a livelihood. Instead, we are having more restrictions imposed by the Board of Fisheries which will the take the profit from hand-trolling.

such a closure. I very rarely see another troller and the few boats I do encounter are invariably fishing sport poles. My fish average 20 lbs. and I seldom catch or harm a "shaker". The average profit is low and the weather is more often than not miserable. I winter fish in order to pay bills as the restrictions have made it hard to earn enough to make it through the winter. It is the only way I can earn money and still stay close to my home and family. Again, a winter troll closure, or closure of waters open to trolling would only harm the village handtroller.

The Alaska Board of Fisheries seems to avoid and ignore general public input in it's decision making process. In 1978, in a letter to the Board, I asked if outlying post offices could be mailed a copy of proposals for public posting. I also asked to be put on their mailing list. Neither was done.

The regulations which do come out of the hearings seem to reflect neither the published proposals or public testimony and in some cases receive no public review.

Last summer, I telephoned Dave Cantillon to clarify his position on the shakey start of the Cohoe run and the rumors of an early troll closure. He Told me, if emergency closures took place they would cover the outside waters first, since fish entered that area first; and the 8-6 closure on Icy Straits should be adequit. There was one more opening for Icy Straits and then it was closed until August 28. During the last regular opening, the buyer at Point Adolphis got less than 50 cohoes on several days of the opening. It could hardly be said the few boats in Icy Straits were decimating the run, yet despite what Cantillon told me, Icy Straits was then closed. Meanwhile, power trollers were doing very well in the waters off the coast.

Icy Straits was re-opened on the 28th, supposedly to evaluate the condition of the coho run. On the morning of the 29th at Excursion Inlet, Fish and Game's tag checking girl told me she had already heard the season would be closed the 6th of Semptember. The floating buyers had delivered no fish and it was impossible for the commission to have gotten any information from the field before the closure was decided upon.

A friend of mine has worked for Fish and Game on fish wiers and

doing egg counts in the streams. He tells me that whenever there is a fund shortage this is the first type of activity cut. The technology is available to collect data and make reasonably accurate determinations of what is happening in the salmon fisheries, and end hind-sight management and inaccurate predictions. It would be nice if the State would put some of the effort and money spent trying to put people out of business into improving the runs. Some of the "Oil money" should be spent on hatcheries and enhancement of natural stocks. It is sadly ironic that politicians who give such good lip service to small business and the needs of the bush communities appoint individuals who make regulations detrimental to both.

I am asking for your help. The presently proposed entry program and the attitude of the Board of Fisheries are making regulations which may drive hand-trollers who fish as a livelihood out of business. This will force us to leave homes and families in search of outside employment in already tight job markets. It is unfair for anyone to be cut by an entry program. However, it will be grossly unfair if people who fish only for enjoyment, and don't care about profitability are allowed to drive people in my situation from the fisheries.

Douglas R. Ogilvy

Douglas R. Ogilvy

c.c. Terry Miller
E. J. Haugen
Don Bennett
Bill Ray

THE FOLLOWING:

(1) the handtroll petition that will be considered by the Board of Fish in March is item #VI-1 on page 7 under notice of proposed changes...etc.

(2) the largest group of papers contain the Southeastern Alaska and Yakutat area salmon troll regulations adopted by the Board of Fish during Dec. 78 and Jan. 80. Expect they will be approved by the Department of Law for filing by March 1.

(3) The smaller group of papers, about 4 pages, are regulations on the salmon troll fishery that were adopted by the Department of Fish and Game under delegation from the board. They were delivered to the Department of Law yesterday, so probably will not be approved for filing until mid to late March.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE ALASKA BOARD OF FISHERIES

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Alaska Board of Fisheries, under authority vested by Alaska Statutes 16.05.251, 16.05.475, 16.05.690, 16.05.940, 16.10.380, 16.10.440, and 16.20.260 proposes to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret and make specific the provisions of Title 16, Alaska Statutes.

Regulations to be the subject of Board action concern subsistence fishing, commercial fishing, sport fishing, and habitat protection.

The Board of Fisheries may adopt, amend, repeal or take no action on the proposed regulatory changes listed in the following informative summary:

SECTION I. SOUTHEASTERN-YAKUTAT AREA.

A. In the Subsistence Shellfish Fishery:

1. Change the boundary for the area in which the king crab season and size limit applies, so that the area will include all inside waters north of the latitude of Cape Spencer.

2. Increase the king crab season.

3. Establish separate legal size limits for abalone taken with or without diving gear.

B. In the Commercial Shrimp Fishery:

1. Reduce the season for taking shrimp with pots in districts 3, 4, and 5, reduce the shrimp pot limit in districts 3 and 4 and establish a pot limit in district 5.

2. Establish a guideline harvest level for shrimp taken in Cholmondely Sound.

3. Prohibit the use of trawls for taking shrimp in Lituya Bay.

C. In the Commercial Dungeness Crab Fishery:

1. Increase or reduce the dungeness crab fishing season and provide separate dungeness crab fishing seasons for the Southeastern and Yakutat portions of the area.

2. Increase the area closed to dungeness crab fishing in district 11.

THE FOLLOWING:

(1) the handtroll petition that will be considered by the Board of Fish in March is item #VI-1 on page 7 under notice of proposed changes...etc.

(2) the largest group of papers contain the Southeastern Alaska and Yakutat area salmon troll regulations adopted by the Board of Fish during Dec. 78 and Jan. 80. Expect they will be approved by the Department of Law for filing by March 1.

(3) The smaller group of papers, about 4 pages, are regulations on the salmon troll fishery that were adopted by the Department of Fish and Game under delegation from the board. They were delivered to the Department of Law yesterday, so probably will not be approved for filing until mid to late March.

D. In the Commercial King Crab Fishery:

1. Change the opening and closing dates for the king crab fishing season.

2. Require that a permit be obtained from the commissioner prior to taking brown king crab during a specific season and provide provisions that can be required by the permit. Such provisions may include, but not be limited to, harvest area and reporting requirements.

3. Provide a guideline harvest level for king crab in the Yakutat districts.

4. Allow the use of ring nets for taking king crab, reduce the king crab pot limit in districts 3, 4 and 5 and require that king crab pots be removed from the water during specified time periods.

5. Increase the area closed to king crab fishing in district 11.

E. In the Commercial Tanner Crab Fishery:

1. Require that all tanner crab pots be removed from the water during the closed tanner crab fishing season.

2. Change the opening and closing dates of the tanner crab fishing season.

3. Reduce the legal size limit for tanner crab.

4. Provide a tanner crab pot limit for the Yakutat districts.

F. In the Commercial Abalone Fishery:

1. Prohibit the commercial harvest of abalone.

2. Establish a season for taking abalone and provide guideline harvest levels.

3. Limit the amount of gear that may be fished from an abalone fishing vessel.

4. Prohibit shipment out of the state of live unprocessed abalone, require that persons shipping abalone out of the state contact the department and have the abalone inspected prior to shipment, prohibit the shucking of abalone until they have been inspected by the department and adopt other regulations to prevent the harvest of undersized abalone and insure that harvest reporting requirements are complied with.

G. In all Commercial Shellfish Fisheries:

1. Prohibit the taking of crab and abalone in areas adjacent to any community.

H. In the Commercial Salmon Fishery:

1. Change the salmon fishing season opening date in section 1-B.

SECTION II. PRINCE WILLIAM SOUND AREA.

A. In the Subsistence Shellfish Fishery:

1. Establish a daily bag and possession limit and legal size limit for dungeness crab and prohibit the taking of female dungeness crab.

B. In the Commercial Shrimp Fishery:

1. List Kodiak as an inspection and reinspection point for shrimp fishing vessels.

C. In the Commercial Tanner Crab Fishery:

1. Reduce the tanner crab fishing season.

D. In the Commercial Clam Fishery:

1. Allow the taking of gaper clams and change the opening and closing dates for the clam fishing season.

E. In the Commercial Trawl Fishery:

1. Allow the use of trawl gear in portions of Hinchinbrook Entrance now closed to the use of trawl gear.

SECTION III. COOK INLET AREAS.

A. In the Commercial Shrimp Fishery:

1. Change the registration deadline for shrimp trawl vessels and require operators of shrimp trawl vessels to report their catch to the department prior to landing.

2. Establish seasons and weekly fishing periods and change the guideline harvest levels for taking shrimp with pots.

3. Change the seasons, weekly fishing periods and guideline harvest levels for taking shrimp with trawls.

4. Define a selective shrimp trawl and establish a season for its use in taking shrimp.

B. In the Commercial Dungeness Crab Fishery:

1. Change the dungeness crab fishing season in the Southern district.

C. In the Commercial Clam Fishery:

1. Increase the Polly Creek certified clam harvesting area.

D. In the Subsistence Finfish Fishery:

1. Provide a season, weekly periods, open and closed areas, bag and possession limits, permit requirements, gear and operation requirements, and other necessary regulations to allow the taking of king salmon for subsistence purposes in the Northern district.

SECTION III. WESTWARD (KODIAK, CHIGNIK, ALASKA PENINSULA, DUTCH HARBOR, ADAK AND BERING SEA) AREAS.

A. In the Subsistence Shellfish Fishery:

1. Establish a subsistence king and tanner crab pot limit in the Kodiak area.

B. In the Commercial Shrimp Fishery:

1. Change the shrimp fishing seasons for the South Peninsula district and the Unalaska Bay section.

2. Reduce the guideline harvest level for shrimp in the South Peninsula district.

3. Repeal the shrimp trawl gear restrictions for the Inner Marmot Bay and Kalsin Bay sections.

C. In the Commercial King Crab Fishery:

1. Change the Adak and Bering Sea king crab areas to exclusive registration areas, prohibit vessels registered for the Kodiak king crab area from fishing any other king crab area, repeal the registration deadline for the Kodiak king crab area and change the registration deadline for the Cook Inlet king crab area.

2. Change the king crab vessel tank inspection requirements for the Kodiak king crab area.

3. Establish sections for the districts of the Kodiak king crab area.

4. Change the opening and closing dates for the king crab fishing season in all the Westward king crab areas.

5. Change the legal size limit for king crab for the Kodiak and Bering Sea areas.

6. Change the king crab guideline harvest levels for all the Westward king crab areas.

7. Provide that the department may allow district transfer of king crab vessels in the Dutch Harbor and Bering Sea king crab areas after determining there will be no enforcement problem.

8. Change the requirements for removal of king crab pots from closed waters for all the Westward king crab areas.

9. Change the king crab pot limit for the Kodiak king crab area.

D. In the Commercial Tanner Crab Fishery:

1. Establish portions of the Westward tanner crab area as exclusive registration areas.

2. Establish sections in the Kodiak tanner crab district.

3. Change the opening and closing dates for the tanner crab fishing seasons in all the districts of the Westward tanner crab area.

4. Establish tanner crab pot limits for the Kodiak and South Peninsula districts.

5. Change the requirements for removal of tanner crab pots from closed waters for all districts of the Westward tanner crab area.

6. Establish tanner crab vessel tank inspection requirements for all districts of the Westward tanner crab area.

7. Establish a tanner crab vessel district registration system for the Westward tanner crab area, including provisions for the number of districts a vessel may register for, changing district registration, movement of gear and crab between districts, validation of registration and suspension or exemption of registration requirements.

E. In the Commercial Miscellaneous Shellfish Fishery:

1. Establish a season and area for the taking of Korean hair crab in the Westward miscellaneous shellfish area.

2. Clarify in what portion of the Westward miscellaneous shellfish area scallops may be taken during the period June 1 through March 31.

SECTION IV. BRISTOL BAY AND ALASKA PENINSULA AREAS.

A. In the Commercial Salmon Fishery:

1. Adopt a Bristol Bay Sockeye Salmon Management Plan. The plan may include, but is not limited to, changes to seasons, weekly fishing periods, gear, gear operation and specification requirements, vessel specifications, operation and registration requirements, closed waters, and other provisions that will maximize the harvest of Bristol Bay sockeye salmon.

SECTION V. STATEWIDE.

A. In the Subsistence Shellfish Fishery:

1. Allow the use of biodegradable pot lid tiedowns on subsistence shrimp pots as an alternative escape mechanism.

2. Provide a daily bag limit for subsistence taken king crab.

3. Allow the use of jigging gear in salt water at all times of the year for the subsistence taking of shellfish.

4. Allow a commercially licensed fishing vessel not registered for miscellaneous shellfish to have aboard subsistence taken miscellaneous shellfish and gear for taking miscellaneous shellfish.

B. In the Commercial Shrimp Fishery:

1. Establish requirements for the use of a vessel to tender a shrimp fishing vessel.

C. In the Commercial Dungeness Crab Fishery:

1. Allow the use of a single escape ring in dungeness crab pots.

D. In the Commercial King Crab Fishery:

1. Repeal the inspection requirements for king crab vessels landing their catch in an area other than the one for which they are registered.

2. Allow storage of king crab pots in waters closed to king crab fishing for a specified time before the opening of those waters to the taking of king crab.

3. Define a king crab pot.

4. Require the reporting of king crab harvested, but lost, dumped overboard or not sold.

E. In the Commercial Tanner Crab Fishery:

1. Change the tanner crab vessel registration deadline for exclusive registration areas.

2. Allow the use of tanner crab pots on long lines.

3. Define a tanner crab pot.

F. In the General Provisions:

1. Require that operators of floating fish processing vessels report to a local representative of the department located within the area of intended operation prior to commencement of processing operations.

2. Prohibit the use of biodegradable pot lid tie downs on commercial dungeness crab pots and allow their use on commercial shrimp pots as an alternative escape mechanism.

3. Adopt the 1980 halibut fishing regulations of the International Pacific Halibut Commission.

4. Provide that the regulations of the U.S. Secretary of Commerce governing the taking of groundfish in the Gulf of Alaska also apply in state waters.

5. Define "waters of Alaska" and "escapement goals or needs."

G. In the Protection of Critical Fish Habitat Areas.

1. Provide that the commissioner or his authorized designee may require individuals and governmental agencies to submit full plans and obtain a permit for proposed land or water use or construction within waters or lands comprising fish critical habitat areas. Establish permit conditions necessary for the protection and maintenance of fish populations or habitat, provide for permit restrictions or revocation, monitoring of activities by the department, delegation of the commissioner's authority, mitigation procedures for rehabilitating damaged habitat, reporting requirements, and define terms necessary to implement these requirements.

SECTION VI. PETITIONS.

The Board of Fisheries will consider the following petitions submitted in accordance with Alaska Statute 44.62.220 which request the board to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code:

1. Prohibit or allow sport fishing from commercial fishing vessels licensed under AS 16.05.490 that are used to carry passengers for hire for the recreational or subsistence taking of fish and are also used to take salmon for commercial purposes with troll gear.

2. Establish the Kodiak and Chignik commercial herring fishing areas as exclusive registration areas, prohibit herring fishing vessels and gear that are registered for the Kodiak and Chignik areas from fishing for herring in any other herring fishing area, prohibit herring vessels and gear that are registered for another herring fishing area from fishing for herring in the Kodiak and Chignik areas and establish a deadline for registering herring vessels and gear for the Kodiak and Chignik areas.

Copies of proposed changes in regulations summarized in this notice may be inspected at any Department of Fish and Game office or may be obtained upon request by writing to the Board of Fisheries, Subport Building, Juneau, Alaska 99801.

Notice is also given that any persons interested may present oral or written statements or arguments relevant to the action proposed in this notice. Written comments should be mailed so as to be received by the Board of Fisheries, Subport Building, Juneau, Alaska 99801, before 4:30 p.m. on March 14, 1980. Written comments may also be submitted to the Board of Fisheries at any time prior to the close of a public hearing to be held at the Anchorage-Westward Hilton Hotel, Anchorage, Alaska. Oral testimony may be given at the public hearing which will commence at 10:00 p.m. March 25, 1980, and continue until all persons have been given the opportunity to be heard. Additional public hearings may be held throughout the meeting just prior to the consideration and adoption of proposed changes in the regulations of the various regulatory areas. An agenda will be posted daily during the meeting.

All persons interested in or affected by commercial, sport and subsistence fishing and habitat protection regulations are hereby informed that, by publishing this legal notice, the Board of Fisheries may consider all of the subjects covered by the proposed changes contained in this notice; the Board is not limited by the specific language or confines of the actual regulatory proposals submitted by the public or the staff. Unless otherwise specified, references to such topics as areas, seasons, species, gear and guideline harvest levels apply to all or portions of the specific topic. On its own motion, after public hearing, the Board may adopt, amend, reject, supplement, or take no action on these matters. The Board may adopt regulations that fall within the range of existing regulations and the proposals summarized in this legal notice. In addition, the Board may adopt other regulations necessary to implement, administer, or enforce the regulations adopted by the Boards. All persons interested in or affected by the subject matter contained in this legal notice should make written or oral comments if they wish to have their views considered by the Board.

DATE: 15 Feb 80

Ronald O. Skoog

Ronald O. Skoog, Secretary
Alaska Board of Fisheries

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.100 is amended to read:

5 AAC 30.100. DESCRIPTION OF AREA. The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 30.200(a) and (b) are amended to read:

5 AAC 30.200. FISHING DISTRICTS. (a) Yakataga district: all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and the longitude of Icy Cape (141°42' W. long.).

(b) Yakutat district: all waters of Alaska between the longitude of Icy Cape (141°42' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 30.331(a)(1)(C) and (F), (a)(2)(A) and (b) are amended to read:

5 AAC 30.331. GILL NET SPECIFICATIONS AND OPERATION. (a) Set gill nets with mesh size smaller than eight inches may not be deepr than 45 meshes and set gill nets with mesh size eight inches or larger may not be deeper than 35 meshes. The individual and aggregate lengths of any and all set gill nets aboard a vessel or in use by a person may not be more than one of the following hung measure:

(1) in the Yakutat district

(C) Yahtze River, Yana River and Malaspina Lake drainage, one net not to exceed 25 fathoms;

(F) East River, one net not to exceed 20 fathoms, except that after the third Monday in August two nets not to exceed 20 fathoms each and an aggregate length not to exceed 40 fathoms;

(2) in the Yakataga district

(A) Tsiu River; one net not to exceed 15 fathoms;

(b) Set gill net may not obstruct more than two thirds of any salmon migratory waterway; except in the Tsiu River where set gill nets may not obstruct more than one half of the waterway. In the intertidal zone this applies at all stages of the tide.

Authority: AS 16.05.251(a)(4),(5)

5 AAC 30.335 is amended to read:

5 AAC 30.335. MINIMUM DISTANCE BETWEEN UNITS OF GEAR. No part of a set gill net may be set or operated within 100 yards of any part of another set gill net, except that in the Tsiu River, no part of a set gill net may be set or operated within 75 yards of any part of another set gill net.

Authority: AS 16.05.251(a)(4)

5 AAC 30.340 is added to read:

5 AAC 30.340. GILL NET OPERATION IN SURFLINE AREAS. The provisions of secs. 310, 320, 331 and 335 of this chapter as applied to each river fishery also apply to the area within a radius of one-half mile from the terminus of that river.

Authority: AS 16.05.251(a)(2)

5 AAC 30.350(a) is amended to read:

5 AAC 30.350. CLOSED WATERS. (a) Salmon may not be taken in the following waters:

(1) Alsek River: upstream starting at three miles below the southern end of "basin";

(2) Situk River: upstream from the Department of Fish and Game regulatory marker one-half mile west of the tip of Strawberry Point to the cut bank on the eastern side of the mouth of Johnson Slough;

(3) Ankau Inlet: inside of a line from 59°32'51" N. lat., 139° 49'42" W. long., to 59°32'47" W. lat., 139°49'42" W. long.

(4) Italio River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles from the terminus of the river;

(5) East River: upstream from the Department of Fish and Game regulatory markers located four miles upstream from the terminus of the river;

(6) Akwe River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles upstream from the terminus of the river;

(7) Lost River: upstream from Department of Fish and Game regulatory markers located 500 yards upstream from the most downstream tree line on the west bank at the terminus of the river;

(8) Old Village Lagoon: upstream from the road.

Authority: AS 16.05.060
AS 16.05.251(a)(2)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.200(f)(1)(2) and (3),(m),(n) and (o) are amended and (f)(4) is added to read:

5 AAC 33.200. FISHING DISTRICTS AND SECTIONS.

(f) unchanged

(1) section 6-A: waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barne to the tip of Point Baker;

(2) section 6-B: waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock light to Key Reef light to Nesbitt Reef light to the tip of Point Nesbitt;

(3) section 6-C: waters enclosed by a line from Lincoln Rock light to the westernmost point of Screen Islands to the westernmost point of March Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef light to Key Reef light to Lincoln Rock light;

(4) section 6-D: all other waters of the district.

(m) District 13: all waters north of a line projecting southwest from the southernmost tip of Cape Ommany, south of a line projecting west from the southernmost tip of Cape Spencer, west of a line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point and west of a line from the southernmost tip of Point Hayes to the northernmost point of Point Thatcher.

(n) District 14: all waters of Icy Strait west of a line from the southernmost tip of Point Couverden to Point Augusta light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northern most point of Soapstone Point to the westernmost point of Column Point.

(p) District 16: all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 33.310(b)(1)(A)(iv), (b)(2) and (c)(5)(B) are amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) unchanged:

(1) unchanged:

(A) unchanged:

(iv) district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia;

(2) during the period April 16 through September 20, salmon may be taken by power troll gear in that portion of district 12 north of the latitude of the northernmost tip of Point Hepburn, district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia, section 15-A and 15-C only during the fishing periods set forth in (b)(1) (B) of this section;

(c) unchanged:

(5) district 15

(B) section 15-C opens by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.350(b)(3)(8)(14)(15)(16)(17)(18)(20)(22)(28), (c)(1)(2)(B), (d)(1)(3)(5)(7)(9)(10)(21)(25)(26)(28)(29), (f)(2)(C), (f)(3)(A)(C), (f)(7)(8)(9)(10), (g)(1)(4)(8)(9)(11)(13)(15)(16), (h)(1)(2)(3)(4)(6)(7)(8)(11), (i)(1), (j)(1)(C), (j)(7)(9)(10)(14)(15), (k)(3)(7), (l)(1)(2)(3)(4)(5), (l)(6)(B)(C), (m)(1)(4) ,(7)(8)(9)(11)(13)(14)(15), (n)(1)(2)(3)(4)(5)(7)(8)(9)(10)(13)(14)(15)(16)(17)(18)(19)(20)(21)(22)(23)(24)(25)(26), (o)(2)(3)(7)(9) and (p)(3)(4) are amended to read:

5 AAC 33.350. CLOSED WATERS.

(b) District 1

(3) Hidden Inlet: north of the latitude of the tip of Hidden Point;

(8) Very Inlet: inside of a line from 54°57'44" N. lat., 130° 57'36" W. long. to 54°57'44" N. lat., 130°57'00" W. long.;

(14) Traitors Cove: east of 131°41'48" W. long.;

(15) Naha Bay: east of 131°38'18" W. long;

(16) Moser Bay: south of a line from the tip of Cod Point to 55° 34'00" N. lat., 131°40'54" W. long.;

(17) Port Stewart: west of a line from 55°43'06" N. lat., 131° 49'17" W. long. to 55°41'33" N. lat., 131°50'05" W. long.;

(18) Helm Bay: west of a line from the tip of Helm Point to 55° 34'54" N. lat., 131°56'57" W. long.;

(20) Vallendar Bay: south of a line from 55°23'45" N. lat., 131° 50'52" W. long. to 55°22'55" N. lat., 131°52'58" W. long.;

(22) Ward Cove: east of a line from 55°23'56" N. lat., 131°44' 27" W. long. to 55°23'38" N. lat., 131°44'01" W. long.;

(28) Ray Anchorage: all waters inside a line between 54°56'39" N. lat., 131°13'54" W. long. and 54°55'42" N. lat., 131°12'54" W. long.;

(c) District 2

(1) Nichols Bay: north of 54°42'07" N. lat.;

(2) Moira Sound

(B) Johnson Cove: south of 54°59'43" N. lat.;

(d) District 3

(1) Hunter Bay: east of a line from the tip of Turn Point to 54°52'48" N. lat., 132°21'20" W. long.;

(3) Keete Inlet: east of the longitude of the tip of Keete Point;

(5) Hetta Harbor: east of the longitude of the tip of Hetta Point;

(7) Eek Inlet: west of a line from 55°08'48" N. lat., 132°39' 25" W. long. to 55°08'53" N. lat., 132°39'23" W. long.;

(9) Ham Cove: south of 54°53'00" N. lat.;

(10) Kasook Inlet: north of 55°01'40" N. lat.

(21) Salt Lake Bay: east of 133°23'??" W. long.

(25) Edna Bay: north of a line from Limestone Point light to 55°55'55" N. lat., 133°37'40" W. long.;

(26) Tokeen Bay: east of a line from the tip of Holbrook Point to 55°59'52" N. lat., 133°27'51" W. long.;

(28) Devilfish Bay: west of 133°20' W. long.;

(29) Hessa Inlet: east of the longitude of the tip of Whirlpool Point;

(f) District 5

(2) Port Beauclerc

(C) The cove 0.7 miles west of the northern tip of Edwards Island between 56°18'20" N. lat., 133°58'30" W. long., and 56°19'15" N. lat., 133°58'20" W. long.;

(3) Affleck Canal

(A) Bear Harbor: north of a line from 56°13'25" N. lat., 134°05'45" W. long., to 56°13'50" N. lat., 134°05'05" W. long.;

(C) north of 56°16'20" W. long.;

(7) Hole in the Wall, northwest coast of Prince of Wales Island: east of 133°38'30" W. long.;

(8) Alvin Bay: west of 133°53'25" W. long.;

(9) Reid Bay: west of 133°53'55" W. long.;

(10) Barrie (Kushehin) Creek: east of a line from 56°27'50" N. lat., 133°40'05" W. long., to Trouble Island at 56°28'45" W. lat., 133°40'45" W. long. to 56°28'00" N. lat., 133°39'55" W. long.;

(g) District 6

(1) Salmon Bay: within a line extending from 56°17'24" N. lat., 133°08'14" W. long., to Rookery Island to 56°19'06" N. lat., 133°09'42" W. long.;

(4) Ratz Harbor: south and west of a line from 55°53'08" N. lat., 132°35'37" W. long., to 55°53'16" N. lat., 132°35'47" W. long.;

(8) Rocky Bay, west coast of Etolin Island: north of a line from 56°04'20" N. lat., 132°36'30" W. long., to 56°04'24" N. lat., 132°36'03" W. long.;

(9) Mosman Inlet: north of 56°05'20" N. lat.;

(11) Exchange Cove: south of a line from 56°13'07" N. lat., 133°03'42" W. long., to 56°12'54" N. lat., 133°03'25" W. long;

(13) Kah Sheets Bay: west of a line from 56°31'28" N. lat., 133°05'12" W. long., to 56°29'46" N. lat., 133°07'12" W. long.;

(15) Wrangell Narrows: all waters north of the tip of Point Alexander except by trolling;

(A) Blind Slough: east of a line from the tip of Anchor Point to Coast Guard light #25 to Coast Guard light #27 to a point 200 yards due north of the tip of Blind Point;

(B) Petersburg Creek: west of a line from 56°48'15" N. lat., 132°59'33" W. long., to Coast Guard light #56 to Coast Guard light #58 to the tip of Bayou Point;

(16) Navy Creek: east of a line from 56°03'30" N. lat., 132°27'54" W. long., to the southwest tip of South Burnett Island and east of a line from the northern tip of South Burnett Island to the southern tip of North Burnett Island and east of a line from the northern tip of North Burnett Island to 56°04'36" N. lat., 132°27'29" W. long.

(h) District 7

(1) Anita Bay: west of a line from the tip of Anita Point to 56° 15'18" N. lat., 132°22'56" W. long., except by trolling;

(2) Olive Cove: south of a line from 56°11'33" N. lat., 132°19' 06" W. long. to 56°11'24" N. lat., 132°18'43" W. long.;

(3) Thom's Place, Zimovia Strait: north of 56°09'38" N. lat.;

(4) Fool's Inlet: north of 56°12'30" N. lat.;

(6) Blake Channel and eastern Passage: north of 56°12'00" N. lat., and east of a line from the tip of Babbler Point to 56°27'48" N. lat., 132° 16'38" W. long., on Hour Point except by trolling which is closed from April 16 through September 30;

(7) Vixen Inlet: east of the longitude of the westernmost tip of Sunshine Island;

(8) Santa Anna Inlet: south of the latitude of the tip of Point Santa Anna;

(11) Union Bay: south of a line from 55°44'48" N. lat., 132°14' 07" W. long. to 55°45'34" N. lat., 132°11'08" W. long.;

(i) District 8

(1) Blind Slough: north of a line from 56°30'45" N. lat., 132°43' 18" W. long., to 56°31'55" N. lat., 132°40'32" W. long.;

(j) District 9

(1) Tebenkof Bay

(C) Thetis Bay: south of 56°23'22" N. lat.;

(7) Port Walter and Little Port Walter: west of a line from 56°23'15" N. lat., 134°38'05" W. long. to 56°23'42" N. lat., 134°38'15" W. long.;

(9) Eliza Harbor: north of 57°14'18" N. lat.;

(10) Kadake Bay: south of a line from 56°48'45" N. lat., 133°58' 00" W. long. to 56°48'23" N. lat., 133°56'28" W. long.;

(14) Deep Cove: west of 134°43'38" W. long.;

(15) Patterson Bay: north of 56°36'44" N. lat.

(k) District 10

(3) Farragut Bay: Francis Anchorage north of 57°08'45" N. lat.;

(7) Dry Bay: inside of a line from 57°03'32" N. lat., 133°01'55" W. long., to 57°02'49" N. lat., 133°01'45" W. long., to 57°02'57" N. lat., 133°00'10" W. long.

(l) District 11

(1) Auke Bay: inside a line from the tip of Point Louisa to the tip of Outer Point;

(2) Taku Inlet: north of a line from the Annex Creek Power House to a point at 58°17'30" N. lat., 134°01'00" W. long.;

(3) Slocum Inlet: all waters east of a line from 58°08'21" N. lat., 134°04'14" W. long., to 58°07'49" N. lat., 134°04'24" W. long.;

(4) Taku Harbor: all waters east of a line from the tip of Stokade Point to 58°03'41" N. lat., 134°01'59" W. long.;

(5) Limestone Inlet: all waters east of a line from 58°01'48" N. lat., 133°59'16" W. long., to 58°02'04" N. lat., 133°59'40" W. long.

(6) Seymour Canal

(B) Mole Harbor: inside a line from the tip of Flaw Point to a point at 57°39'40" N. lat., 134°01'30" W. long.;

(C) Pleasant Bay: all waters inside a line from 57°38'50" N. lat., 133°59'42" W. long. to a point at 57°38'28" N. lat., 133° 57'25" W. long.;

(m) District 12

(1) Wilson Cove: all waters east of the longitude of Point Wilson;

(4) Hood Bay: all waters east of 134°24'30" W. long. except by trolling;

(5) Kootznahoo Inlet: all waters east of a line from the tip of Turn Point to Village Rock light except by trolling;

(7) Funter Bay: all waters inside the longitude of the tip of Clear Point, except by trolling;

(8) Howard Bay: all waters inside the latitude of the tip of Point Howard, except by trolling;

(9) Freshwater Bay: all waters inside a line from a point at 57°53'20" N. lat., 135°07'35" W. long., to 57°54'45" N. lat., 135°06'00" W. long.;

(11) Basket Bay: all waters inside a line from 57°39'50" N. lat., 134°53'12" W. long., to 57°39'17" N. lat., 134°53'53" W. long.;

(13) Wann Springs Bay: west of 134°46'38" W. long.;

(14) False Bay: west of a line from 57°58'33" N. lat., 134°55' 05" W. long., to 57°57'00" N. lat., 134°55'23" W. long.;

(15) Wukuklook Creek: west of a line from a point at 57°05'15" N. lat., 135°55'30" W. long., to Flinks Point at 57°52'30" N. lat., 135°57'20" W. long.;

(n) District 13

(1) isianski Inlet: south of a line from 57°56'46" N. lat., 136°14'10" W. long.; to 57°57'15" N. lat., 136°12'53" W. long. except by trolling;

(2) Salt Lake Lagoon, Takanis Bay: north and east of a line from 57°55'05" N. lat., 136°30'22" W. long., to 57°55'25" N. lat., 136°31'00" W. long.;

(3) Stag Bay: east of 136°21'25" W. long.;

(4) Goulding Harbor: north of a line from 57°46'18" N. lat., 136°15'05" W. long., to 57°46'22" N. lat., 136°15'27" W. long.;

(5) Black Bay: north and east of a line from 57°42'37" N. lat., 136°09'20" W. long., to 57°42'23" N. lat., 136°09'10" W. long.;

(7) Waterfall Cove, Slocum Arm: north and east of a line from 57° 37'18" N. lat., 135°56'10" W. long., to 57°30'53" N. lat., 135°55'00" W. long.;

(8) Fish Bay: east of 135°35'10" W. long.;

(9) Hoonah Sound: west and north of a line from 57°44'12" N. lat., 135°43'40" W. long., to 57°43'45" N. lat., 135°44'40" W. long.;

(10) Ushk Bay: west of 135°35'00" W. long.;

(13) Hanus Bay: south of a line from 57°25'29" N. lat., 134°59' 00" W. long., to 57°25'18" N. lat., 135°03'40" W. long.;

(14) Nakwasina Passage: north and east of a line from 57°14'12" N. lat., 135°29'55" W. long., to 57°14'53" N. lat., 135°30'28" W. long.;

(15) Nakwasina Sound: north and east of a line from 57°11'42" N. lat., 135°23'30" W. long., to 57°12'12" N. lat., 135°22'40" W. long.;

(16) Katlian Bay: north and east of a line from 57°09'30" N. lat., 135°22'35" W. long., to 57°09'07" N. lat., 135°21'55" W. long.

(17) Redoubt Bay: east of 135°18'53" W. long.;

(18) Port Banks: south and east of a line from 56°36'07" N. lat. 135°00'20" W. long., to 56°35'55" N. lat., 135°01'10" W. long.;

(19) Still Harbor: south and east of a line from 56°33'15" N. lat., 135°02'40" W. long., to 56°33'38" N. lat., 135°02'25" W. long.;

(20) Redfish Bay: north and west of a line from 56°20'41" N. lat., 134°51'31" W. long., to 56°20'49" N. lat., 134°51'05" W. long.;

(21) Big Branch Bay: north and east of a line from 56°19'27" N. lat., 134°50'30" W. long., to 56°19'18" N. lat., 134°50'08" W. long.;

(22) Sitkoh Bay: west of a line from 57°29'17" N. lat., 134°53'25" W. long., to 57°29'36" N. lat., 134°53'58" W. long.;

(23) Patterson Bay: west of a line from 57°40'23" N. lat., 135° 42'42" W. long., to 57°39'35" N. lat., 135°42'18" W. long.;

(24) Fick Cove: south and west of a line from 57°37'51" N. lat., 135°39'38" W. long., to 57°38'25" N. lat., 135°40'39" W. long.;

(25) Starrigavan Bay: all waters east of a line from 57°07'47" N. lat., 135°22'45" W. long., to the ferry terminal dock at 57°08'25" N. lat., 135°22'30" W. long.;

(26) Deep Bay: west of a line from 57°39'35" N. lat., 135°37'20" W. long., to 57°26'32" N. lat., 135°37'46" W. long.

(o) District 14

(2) Port Althorp: within a line from the tip of Point Lucan to a point at 57° 09'40" N. lat., 135°19'30" W. long., except by trolling;

(3) Idaho Inlet: south of the latitude of the tip of Gull Point, except by trolling;

(7) Whitestone Harbor: within a line from 58°04'15" N. lat., 135° 04'36" W. long., to 58°03'36" N. lat., 135°04'15" W. long., except by trolling;

(9) Excursion Inlet: north of a line from 58°22'36" N. lat., 135° 28'30" W. long., to 58°22'36" N. lat., 135°28'18" W. long., except by trolling;

(p) District 15

(3) Taiya Inlet: all waters north of the latitude of the tip of Taiya Point, except by trolling;

(4) St. James Bay: all waters north of a line from the tip of Point Whidby to St. James Point at 58°33'45" N. lat., 135°09'45" W. long., except by trolling.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.360 is added to read:

5 AAC 33.360. DISTRICT ONE AND SIX PINK SALMON MANAGEMENT PLAN. In districts 1 and 6, when a purse seine fishery is harvesting pink salmon stocks subject to concurrent fishing by drift gill nets; for each day or portion of a day the purse seine fishery is open, the corresponding gill net fishery shall be open a full 24 hours.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(4)

5 AAC 33.392 is amended to read:

5 AAC 33.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the mid-point of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this paragraph.

Authority: AS 16.05.251(a)(3),(4),(7)

5 AAC 33.393 is amended to read:

5 AAC 33.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho by troll gear.

Authority: AS 16.05.251(a)(3),(4),(7)

5 AAC 33.410(a)(1) and (2) are amended to read:

5 AAC 33.410. FISHING SEASONS. (a) Sablefish may be taken only as follows:

(1) in the northern area which includes district 9 north and east of a line from the southernmost tip of Cape Ommaney to the northernmost tip of Nation Point, district 10, 11, 12, section 13-C, districts 14 and 15, from September 1 through November 15 or until the area is closed by emergency order;

(2) in the southern area which includes districts 1, 2, 3, 5, 6, 7, and 8, from June 15 through November 15 or until the area is closed by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3)

5 AAC 33.415(a) and (b) are added to read:

5 AAC 33.415. GUIDELINE HARVEST LEVELS. (a) In the northern area as described in sec. 410(a)(1) of this chapter, the guideline harvest range for sable fish is 500,000 to 900,000 pounds (227 to 408 m.t.).

(b) in the southern area as described in sec. 410(a)(2) of this chapter, the guideline harvest range for sablefish is 125,000 to 500,000 pounds (57 to 227 m.t.).

Authority: AS 16.05.251(a)(2),(3)

5 AAC 33.420(a),(b) and (c) are added to read:

5 AAC 33.420. REGISTRATION. (a) Operators of fishing vessels intending to fish for sablefish in the northern area as described in sec. 410(a)(1) of this chapter shall notify a local representative of the department by phone, radio or in person within 72 hours before starting fishing operations in the area.

(b) Within 24 hours after leaving the northern area, operators of sablefish fishing vessels shall notify a local representative of the department by phone, radio or in person.

(c) A vessel operator reporting as required by (a) and (b) of this section shall also report the amount of sablefish on board the vessel at the time of reporting.

Authority: AS 16.05.251(a)(2).(4),(7),(12)

Authority: AS 16.05.251(a)
AS 16.05.475
AS 16.05.905
AS 16.05.910
AS 16.05.920
AS 16.05.940

5 AAC 39.250(c) is amended and (d) is added to read:

5 AAC 39.250. GILL NET SPECIFICATIONS AND OPERATION.

(c) Gill net web may not contain no less than 30 filaments.

(d) The float line and floats of gill nets must be floating on the surface of the water while the net is fishing, unless natural conditions cause the net to temporarily sink. The restriction of this subsection does not apply in Kotzebue-Northern area (5 AAC 03.100), Norton Sound-Port Clarence area (5 AAC 04.100), Yukon area (5 AAC 05.100) and Kuskokwim area (5 AAC 07.100).

Authority: AS 16.05.251(a)(4)

5 AAC 39.270(c) and (d) are amended and (e) is added to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION.

(c) Each licensed power troll vessel must display its permanent vessel license plate number in permanent symbols of black on a white background. Each number must be at least twelve inches in height, with lines at least one inch in width and must be permanently affixed on both sides of the cabin or hull so as not to be obscured. The numbers must be displayed at all times until the end of the calendar year.

(d) Each licensed hand troll vessel must display the letters HT in permanent block letters. Each letter must be painted on both sides of the vessel hull or cabin in a color contrasting with the background, at least four inches in height, at least one-half inch in width, plainly visible and unobscured at all times. The letters must be displayed at all times until the end of the calendar year. No hand troll vessel may display its permanent vessel plate number (ADF&G number) in any location other than on the vessel license plate.

(e) No more than six troll gurdies may be mounted on board any salmon troll vessel. A troll gurdy is a spool type device around which a troll line can be wrapped.

Authority: AS 16.05.251(a)(4),(5),(7)

TITLE 5. FISH AND GAME.

PART I. COMMERCIAL AND SUBSISTENCE FISHING AND PRIVATE NONPROFIT SALMON HATCHERIES.

CHAPTER 21.
COOK INLET AREA.

5 AAC 21.430(a) is amended to read:

5 AAC 21.430. GEAR. (a) Bottomfish may be taken in all districts only by trawls, longlines and mechanical jigging machines.

Authority: AS 16.05.251(a)(4),(7), (12)

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.392 is amended to read:

5 AAC 30.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the midpoint of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this section.

Authority: AS 16.05.251(a)(3),(4), (7)

5 AAC 30.393 is amended to read:

5 AAC 30.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho salmon by troll gear.

Authority: AS 16.05.251(a)(3),(4), (7)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.310(b)(1)(B) is amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) Salmon may be taken by hand troll and power troll gear from January 1 through December 31 in all districts except as provided in sec. 350 of this chapter and except as follows:

(1) during the period April 16 through September 20 salmon may be taken by hand troll gear:

(B) April 16 through April 21
April 28 through May 5
May 12 through May 19
May 26 through June 2
June 9 through June 16
June 23 through June 30
July 7 through July 14
July 21 through July 28
August 4 through August 11
August 18 through August 25
September 1 through September 8
September 15 through September 20

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.365 is adopted to read:

5 AAC 33.365. SOUTHEASTERN ALASKA-YAKUTAT CHINOOK AND COHO SALMON TROLL FISHERIES MANAGEMENT PLAN. (a) The management of the Southeastern Alaska and Yakutat areas chinook and coho salmon troll fisheries is complex because of mixing of the salmon stocks and fishing effort placed upon those salmon stocks by the subsistence, commercial and recreational user groups. The Board of Fisheries is concerned that some user groups, particularly those who traditionally fish the inshore and terminal salmon fishing areas as described in sec. 312(a)(1),(2) and (3) of this chapter, may be receiving reduced opportunities to take chinook and coho salmon because of increasing fishing effort by the salmon power troll fleet on mixed stocks of those species of salmon in the coastal and offshore salmon fishing areas as described in sec. 312(a)(4) and (5) of this chapter. The board is also concerned that continued increases in fishing effort on mixed chinook and coho salmon stocks may result in overharvest of individual salmon stocks or aggregations of those stocks, such that spawning escapement of those stocks to their natal streams may fall below that required to maintain a sustained yield of those stocks. Because of the above concerns, the board has adopted regulations that control the time, area of operation and efficiency of the salmon power and hand troll fisheries.

(b) The board recognizes that changes in size and timing of the chinook and coho salmon runs and changes in the distribution of fishing effort by the hand and power troll fleet may require inseason adjustments to salmon fishing seasons, periods and areas to allow chinook and coho salmon to escape the coastal and offshore fisheries and move into the inshore and terminal fishing areas. The department shall make inseason adjustments to salmon fishing seasons, periods and areas as follows:

(1) there may be no changes made to the chinook salmon fishing seasons, periods and areas during the period January 1 through June 14;

(2) there may be no changes made to the coho salmon fishing seasons, periods and areas during the period June 15 through July 9;

(3) about July 10 the department will evaluate the size and distribution of the coho salmon run and will close the Southeastern and Yakutat areas salmon troll fishery for 10 days, unless the department determines that the coho salmon run is larger than the last 10 year average and that acceptable numbers of coho salmon are moving into the inshore salmon fishing areas;

(4) following any July closure made in accordance with (3) of this subsection, the Southeastern Alaska and Yakutat salmon fishing areas will reopen for salmon hand and power troll fishing as provided for in the salmon hand and power troll fishing regulations contained in chaps. 30, 33 and 39 of this title;

(5) additional closures of the salmon hand and power troll fishing seasons, periods and areas may be required if the department determines that the strength of the coho salmon run in the inshore and terminal salmon fishing areas is less than required to provide a spawning escapement that will maintain the runs on a sustained yield basis.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(11)

CHAPTER 39.
GENERAL PROVISIONS.

5 AAC 39.120(g) is added to read:

5 AAC 39.120. REGISTRATION OF COMMERCIAL FISHING VESSELS.

(g) Registration requirements for salmon troll fishing vessels are as follows:

(1) the owner or operator of any fishing vessel that is to be used to take salmon with hand or power troll gear shall register that vessel with the department;

(2) no fishing vessel may be registered as both a hand troll and a power troll vessel;

(3) registration is accomplished by completing a form provided by the department and returning that form to a department office;

(4) any vessel that is to be used as a salmon troll fishing vessel must be registered before April 15 of each calendar year;

(5) this subsection becomes effective January 1, 1981.

Authority: AS 16.05.251(a)(2),(4),(5),(12)
AS 16.05.490
AS 16.05.510

5 AAC 39.270(a) is amended to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION. (a) The maximum number of trolling lines that may be operated from any salmon troll vessel is as follows:

(1) from power troll vessels: no more than four lines, except that no more than six lines may be operated in that portion of the Seaward Biological Influence Zone north of the latitude of the southernmost tip of Cape Spencer;

(2) from hand troll vessels

(A) using hand troll gurdies: no more than two lines to which multiple leaders and hooks may be attached;

(B) using fishing rods: no more than four lines with no more than one leader and one lure or two baited hooks per leader;

(3) hand troll vessels may not concurrently use hand troll gurdies and fishing rods;

(4) for the purposes of this subsection, a fishing rod is a tapering often jointed rod equipped with a hand grip and line guides and upon which is mounted a hand powered reel used to deploy and retrieve the trolling line and a hand troll gurdy is a troll gurdy powered by hand or hand crank that is not mounted on or used in conjunction with a fishing rod.

Authority: AS 16.05.251(a)(4),(5), (7)

Ombudsman

MEMO

Date: April 3, 1980

To: Regulation Review Committee Members

From: Judith Holden, Ombudsman Assistant

Subject: Handtrolling Cases

Attached is a copy of material which was to have been distributed to each of you some months ago, but may not have found its way to your desk.

As you will see, this office investigated quite a number of cases brought to us from handtrollers throughout Southeast Alaska. We made formal recommendations which were not acted upon in a positive manner by the Board of Fisheries. The issue was then brought before your committee, at our request.

We understand that the formal/public hearings have taken place, your committee has discussed the matter, and is now waiting until after the Board of Fisheries meets again* to see what action they take. We further understand that if the Board of Fisheries does not take sufficient action, you will consider the matter further.

We are now in the process of formally closing the handtrolling cases and the ball is in your court. If further input is desired from this office, please contact Frank Flavin. Thank you for your attention to this matter.

/jah
Attachment
cc: Frank Flavin

*Board of Fisheries is meeting this week in Anchorage.

Ombudsman
Frank Flavin

State of Alaska

Reply to:

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JUNEAU
OFFICE OF THE OMBUDSMAN

September 21, 1979

Ronald O. Skoog
Commissioner
Alaska Department of Fish & Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0270, J79-0271, J79-0272, J79-0283, J79-0366, J79-0368 and J79-0391
aJ79-0298

Dear Commissioner Skoog:

Please take notice that the Office of the Ombudsman has completed its investigation of the following allegations:

1. That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction;

2. That the ban on hand trolling in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers;

3. And, that the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan on May 15, 1979.

BACKGROUND

1. At the December 1977 Board of Fisheries meeting, the "Board unanimously adopted the coastal fishing area 6/0, Goll absent. It was moved by Jensen and seconded by Fair that hand troll gear be prohibited in the coastal fishing zone. The motion carried 6/0."

2. In early 1979, in a "Report to the Board of Fisheries on the Southeast Alaska Salmon Troll Fishery," it was stated that the North Pacific Fisheries Management Council had recently concluded a first level of review on the draft of the High Seas Salmon Fishery Off the Coast of Alaska East of 175° East Longitude. The FMP was to undergo further review and redrafting and was expected to be implemented by mid-April, 1979. Included in the "proposed regulations in the plan" was "3. Power troll and sport fish gear only."

3. On May 9, 1979, the Division of Commercial Fisheries, in a "NEWS" release, reminded salmon trollers that the State Regulations adopted at the January, 1979 Alaska Board of Fisheries meeting (which extended state regulatory control of the Southeast troll fishery into the adjacent Seward Biological Influence Zone) were currently in effect. It further stated that anticipated adoption of federal regulations for salmon fisheries in the Fisheries Conservation Zone has caused uncertainties over the applicability of the State regulations offshore. The news release concluded that the NPFMC's Fishery Management Plan and its regulations would not go into effect until they were approved by the Secretary of Commerce and therefore, State fishery regulations concerning salmon trolling (ban on hand trolling) were still effective in both state and federal waters.

4. On May 15, 1979, (earlier than was expected) the assistant administrator for Fisheries, Department of Commerce (NOAA) announced approval of the Fishery Management Plan "with the exception of one provision," and issued on an emergency basis regulations implementing the approved portion. The following appeared in the Federal Register, Vol. 44, No. 98, dated Friday, May 18, 1979:

> provision of the FMP was not approved and will not be implemented. The disapproved portion of the FMP would have prevented fishing by hand trollers in the fishery conservation zone (FCZ). The Assistant Administrator determined that this provision was inconsistent with National Standard 4 of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., (Act), because it would have prohibited fishing by certain hand trollers who had historically fished in this area, while it would have allowed power trollers with a similar history to continue to fish in the FCZ. Power trollers use power from their boats' engines to crank their reels, while hand trollers crank their reels manually. It was determined that no valid conservation purpose was served by the distinctions that were drawn between the two types of gear.

The FMP further stated, under Sec. 674.24 Gear restrictions, that "Commercial fishing for salmon in the East Area is permitted only with power or hand-troll gear."

5. Winifred H. Meibohm, Executive Director, National Marine Fisheries Service, in a May 15, 1979 communication to the Juneau NOAA office, related detail on the Fishery Management Plan. Selected portions of that memo include:

"Regulations implementing the approved portion of the FMP are issued on an emergency basis in order to limit fishing effort on the salmon stocks."

"The salmon fishery covered by the FMP occurs throughout the waters off Alaska east of 175° east longitude... divided into two management units...(and) Both management units include the FCZ and waters under Alaskan jurisdiction. All harvest taking place on those portions of the management units within State waters will be regulated by Alaska."

"Optimum yield for this fishery corresponds to the average annual harvest during recent years. The FMP is intended to maintain recent levels of fishing effort on the salmon stocks. The NPFMC determined that an increase in fishing effort would be detrimental to the stocks. Any substantial decrease in fishing effort, on the other hand, would be unacceptable for social and economic reasons, because many individuals are dependent on the ocean salmon fishery."

Under a section entitled "Limited Entry Moratorium" it was stated that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added.)

"With the exception of allowing hand trolling in the FCZ, these management measures are essentially the same as the Alaska regulations governing salmon fishing in waters under its jurisdiction."

"These regulations are effective immediately as emergency regulations."

It was further stated under Subpart A-General, 674.1 Purpose and Scope, (b), that "These regulations govern fishing for salmon by fishing vessels of the United States within that portion of the North Pacific Ocean seaward of Alaska, east of 175° East Longitude, over which the United States exercised exclusive fishery management authority under the Act." (Emphasis added.) The "Act" means the Fishery Conservation and Management Act of 1976, 16 U.S.C. Sec. 1801-1882, as amended.

6. On May 22, 1979, the Division of Commercial Fisheries, in a "NEWS" release, announced the recent enactment of the Fishery Management Plan. It stated that, "The plan and implementing regulations, which became effective on May 15, 1979, fail to regulate the salmon hand troll fishery in offshore waters. In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective." (Emphasis added; regulation referred to is the "ban" on hand trolling offshore.)

7. In a letter to Mr. Robert C. Loomis dated June 13, 1979, Mr. Harry L. Rietze, Director of the Alaska Region, NOAA, NMFS, commented that "salmon regulations cover fishing for salmon and tanner crab in Alaskan waters outside 3 miles. No other domestic fisheries are now covered by federal regulation within the 3-200 mile Fishery Conservation Zone. When regulations for additional fisheries are finalized, permits may be required, at which time NMFS Juneau will begin issuing permits. Regulations implementing the fishery management plan for the salmon fishery in the 3-200 mile Fishery Conservation Zone (FCZ) in the Gulf of Alaska are now in effect. These regulations allow commercial fishing for salmon with troll gear only." Mr. Rietze further stated that "Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters. We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities." The letter did not, however, make it clear whose regulations (Alaska or Federal) were to be followed.

FINDINGS

Allegation No. 1: That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

Analysis: The primary Departmental basis for the ban on high seas salmon hand trolling is the increase in effort by hand trollers on depleted King Salmon and heavily utilized coho stocks. [Interviewers - Skoog, Cook, Pennoyer, Cantillon; letter from Commissioner Skoog to Secretary Kreps, April 21, 1979; Memo John G. Gissberg, Assistant Attorney General re: proposed ban on hand trolling in FCZ] The Board of Fisheries intent in

adopting the ban was to limit the total hand troll catch to 20% of the salmon catch. [Performance Review of Commercial Fisheries Entry Commission by Legislative Audit, May 15, 1979, at pages 26 and 376); Memo John Williams, CFEC from Carl Rosier, Deputy Commissioner Alaska Department of Fish and Game, August 21, 1979, re: Limited Entry for Hand Troll Gear.]

There is no doubt that the increase in hand troll effort is a legitimate cause for Board and Department concern and regulatory response. Certainly, the increase calls for restrictive regulation and arguably a lid on the hand troll effort.

However, a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management.

There is little doubt the high seas hand trolling ban and overall hand troll restrictions are in response to the failure of the Limited Entry Commission to implement limited entry in the hand troll fishery. However, the Board of Fisheries regulatory scheme amounts to limited entry without the procedural safeguards and thorough economic and social research required of the Commercial Fisheries Entry Commission.

It is clear from the Board of Fisheries minutes and our interviews with Departmental staff that hand troll fishermen are considered less "traditional," less "beneficial," and less "dependent" than power trollers. [These assumptions will be considered later in this report.]

The legal problems associated with the Board of Fisheries assuming a responsibility delegated to the Commercial Fisheries Entry Commission has been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. Practically, the Board of Fisheries does not have the economic or social data base to decide that one class of fishermen, hand trollers, should be totally restricted from the high seas fishery while another class of fishermen, power trollers, are allowed the privilege.

Social or economic manipulation of the livelihood of the state's citizens should be accomplished, if at all, by elected officials (the Legislature) directly or through appointed officials (the Commercial Fisheries Entry Commission) pursuant to a legislatively established formula with due process safeguards. With the Commercial Fisheries Entry Commission safeguards have been legislatively established--with the Board of Fisheries they have not.

It should be noted that the federal Fisheries Management Plan disapproved the high seas hand troll ban because it served no valid conservation purpose.

With the implementation of the high seas hand trolling ban and maximum catch percentage, the Board of Fisheries moved from managing the methods and means of harvest to managing the composition of the harvesters.

To further restrict or even put a lid on the hand troll effort in the high seas would undoubtedly have a salutory effect on the fish. To ban the hand trollers completely has an unconscionably greater salutory effect on competing fishermen.

Determination: Partially Justified. The increase in hand troll effort necessitates restrictions or arguably a lid on the effort. The Board of Fisheries, in adopting a complete high seas ban, has adopted a limited entry rather than conservation measure.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers.

Analysis: One Departmental basis for the hand trolling ban in the high seas fishery was to prevent the hand troll fishery from becoming more established. [Letter from Commissioner Skoog to Secretary Kreps, April 23, 1979.] Most Departmental personnel interviewed felt that power trolling was the "traditional" use in the high seas area.

Some Departmental officials characterize hand trolling as sport-commercial, "weekend warriors," etc. Others point to a growing "professional" hand trolling effort. One is struck, however, with the lack of concrete data, beyond observation or assumption as to both the size and importance (social and economic) of the hand troll effort both in the inshore and high seas zones.

In his memo on the proposed ban on handtrolling in the FCZ, Assistant Attorney General Gissberg states: "In the past that fleet has generally represented weekend fishermen seeking additional income or tax advantages on their fishing expenditures." This statement is fairly reflective of the Departmental characterization of hand trollers that we encountered. However, we have yet to see any hard data which establishes the income, dependence or "tax sophistication" of the average hand troller, past or present.

Even the total number of hand troll fishermen in the high seas area (Fisheries Conservation Zone) is not tied down. Five hand trollers were "reported" operating by both Gissberg and the federal "Informational Memorandum" on the "Partial Disapproval of the Fishery Management Plan for the High Seas Salmon Fisheries off the Coast of Alaska." It is not at all certain that this figure is accurate as it does not account for "occasional" effort, nor is the information on fish tickets accurate or thorough enough to establish the actual location of catch and the total hand troll effort in the FCZ.

If the total hand troll fishing effort in the FCZ were indeed five hand trollers this fact certainly undermines the conservation necessity of a total ban in lieu of tighter restrictions or a lid on the high seas hand troll effort.

The federal Fisheries Management Plan rejected the proposed hand troll ban as power trollers who had previously fished the area would be permitted to continue but hand trollers would not.

Determination: Justified. Very little data concerning the economic and social aspects of the troll fishery have been compiled yet basic assumptions concerning the nature of this fishery have influenced the allocation of fish between user groups. Traditional hand troll effort in the FCZ is not well documented, nor is there any legitimate or rational reason why traditional hand trollers in the FCZ should be banned and power trollers permitted to continue.

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan.

Analysis: On May 15, 1979, the assistant administrator for Fisheries announced the approval of the Fishery Management Plan, but with the disapproval of that portion of the plan that provided for a ban on hand trolling in the FCZ. This created a clear inconsistency between federal regulation and state regulation of hand trolling in the FCZ; the federal plan allowing, the state plan prohibiting.

Since that date neither the State nor federal government have made a reasonable effort to inform the involved fishermen as to which management scheme the fishermen should obey.

Clearly the federal law pre-empts. In State v. Bundrant, et. al., 546 P. 2d 530 (Alaska, 1976) the Alaska Supreme Court stated that the doctrine of pre-emption holds "that when Congress has exercised its regulatory authority over a particular subject

in manner to indicate an intention to deal fully and exclusively therewith, all state regulation in that particular field must yield." (Id. at p. 538)

The language in the Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) is clear as to federal exclusivity. The Act provides:

> (b) Purposes.--It is therefore declared to be the purposes of the Congress in this Act--
>
> (1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;. . .

Despite the clear pre-emption of the FMP allowing hand trolling, State and federal regional officials have finessed the pre-emption question leaving involved fishermen guessing as to if and when the FMP takes effect.

The May 22, 1979 Division of Commercial Fisheries "NEWS" release was at best deceptive in stating:

> "In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective."

The preceeding language implies a failure to act when in fact the hand troll ban was specifically disapproved and a regulatory scheme allowing hand trollers approved.

The director of the Alaska Region, NOAA, NMFS was more artful in dodging the pre-emption question completely and steering Robert C. Loomis, a fisherman, back into the morass of legal uncertainty:

> "Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters.

We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities."

Determination: Justified. State and federal regional officials are leaving the pre-emption question murky until ADF&G and the North Pacific Management Council seek a reversal of the disapproval of the hand troll ban in the FCZ. This is fine for administrators and managers but lousy for the fishermen caught in the middle.

CONCLUSION

The expansion of the hand troll fleet clearly calls for increasingly restrictive regulation to protect salmon stocks and diminish the unfairness to other fishermen who have been subject to limited entry. However, any economic regulation of hand trollers is clearly the province of the legislatively empowered Commercial Fisheries Entry Commission and not the Board of Fisheries. The FCZ hand troll ban and 20% catch limitations both amount to economic regulation and the administrative seizure of control over the livelihoods of State residents without their approval, without the approval of their elected representatives, and without adequate research or procedural safeguards.

Recommendations:

1. The Administrative Regulation Review Committee of the Legislature should review 5 AAC 33.330 and 5 AAC 48.090;

2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting;

3. The commissioner of Fish and Game and regional director, NOAA, NMFS should announce the date that hand trolling pursuant to the FMP will be permissible, or offer negotiation or litigation plans for resolving the inconsistencies in the federal and state regulatory schemes; and

4. That limited entry of the hand troll fishery be undertaken expeditiously.

Thank you for your assistance and consideration in this matter. We look forward to your response within 30 days.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF:rj

cc: Gregory F. Cook
Steven Pennoyer
Nick Szabo
S. E. Regional "O" Office

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

September 25, 1979

RECEIVED
SEP 2[illegible]
JUNEAU
OFFICE OF THE OMBUDSMAN

Ronald O. Skoog
Commissioner
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0279, J79-0271, J79-0272, J79-0283, J79-0366, J79-0368, J79-0391 and *J79-0398 (* not previously listed)

Dear Commissioner Skoog:

Several items in our findings issued September 21, 1979, need further explanation.

First, we will not send these findings to the Administrative Regulation Review Committee or the Commercial Fisheries Entry Commission until you have responded, and a copy of that response will be included with our materials.

Second, we will not send copies of these findings to our complainants for two weeks. As you know we do not publicize our findings (if at all) until we have a response from the Department. In fairness to agencies, as we cannot control the activities of our complainants, we try to allow a grace period for the Department in controversial matters.

Finally, recommendation number four is made with the understanding that CFEC is already working on limited entry for hand trolling. Because of the problems brought to light by the Alaska Department of Fish and Game we hope that CFEC evaluation and implementation occur expeditiously.

Thank you for your attention and consideration in this matter.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF:rj
cc: Gregory F. Cook
Steven Pennoyer
Nick Szabo

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

October 12, 1979

RECEIVED
OCT 15 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

Mr. Frank Flavin, Ombudsman
State of Alaska
840 K Street, Room 203
Anchorage, Alaska 99501

Dear Frank:

I have received your letter of September 21, 1979, and will respond to the allegations and findings contained in that letter in the order in which they were made. I have consulted with Steve Pennoyer, Director of the Division of Commercial Fisheries, and Greg Cook, Executive Director of the Alaska Boards of Fisheries and Game, before compiling these comments.

Allegation No. 1. The ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

The gist of the analysis appears to be contained in the second full paragraph on page 5, wherein you state "...a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." In order to respond to that conclusion I must examine each clause of that lengthy sentence separately.

The Board of Fisheries has established a total ban on one gear type in one area in many different instances. For example, a variety of areas exist in the state that are open exclusively to gillnetting for both the salmon fishery and the herring fishery. Also,

a) Security Cove was made an exclusive gillnet area for herring in December, 1978;

b) In Upper Cook Inlet, no seining north of Anchor Point is allowed, and no drift gillnetting is allowed below Anchor Point;

c) Set gillnetting was eliminated from Lynn Canal in 1972.

Such action by the Board of Fisheries is within their delegated powers to affect the methods and means of take of fisheries resources.

(AS 16.05.251. See also Dow v. Ickes 123 F. 2d 909 (1941)). The ban on hand trolling in the FCZ similarly falls within the Board's powers as a regulation affecting the methods and means of take.

The second clause of the sentence cited above states that "the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." First, the Board has never "adopted" a maximum catch percentage for hand trolling. The percentage figure to which you refer, I assume, comes from a January 23, 1979, letter from Greg Cook, Executive Director, Board of Fisheries, to the Commercial Fisheries Entry Commission. In that letter the following language appears, "The Board respectfully wishes to express to the Commission its interest in the development of a program that would consider the following elements: 1) preference for rural over urban hand trollers, and 2) allocation of hand troll permits in a number that will result in an overall ratio of the troll catch of 80 percent power troll and 20 percent hand troll." The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers. The percentage figure to which you refer was a request made to the Commercial Fisheries Entry Commission for their consideration. No formal adoption of that figure has been made by the Board of Fisheries.

Finally, you state that the Board's disposition toward that 80 percent/ 20 percent distribution of the total troll catch is "economic and social regulation that is deliberate and not incidental to conservation management." As stated above, no regulation per se is involved. To claim that limiting effort in a particular fishery is not an aspect of conservation management is not realistic. The level of effort present in a particular fishery corrolates directly to the total number of fish which will be taken, and concomitantly affects total escapement.

In summary, I disagree with all of the conclusions which you state in the second full paragraph on page 5.

In paragraph 3 of page 5, you state that the Board of Fisheries' regulatory scheme "amounts to limited entry." Again I must disagree strongly with your conclusion. As all Alaskans know, a limited entry scheme entails regulating entry into a commercial fishery. (See AS 16.43.100(a)) Entry into the hand troll fishery is still unlimited and is open to anyone with gear and a boat. The Board of Fisheries has taken no action that is tantamount to "limited entry."

In paragraph 4 of page 5, you make the conclusion that hand troll fishermen are considered inferior in several ways in relation to power trollers. Certainly, the Board of Fisheries is well aware that hand trollers antedate power trollers and consequently are more "traditional." However, hand trolling gear has not remained static since the inception of the hand troll fishery. The gear used by hand trollers now is far more sophisticated (more lines, more hooks, more efficient methods of retrieval) than the gear fished by hand trollers during the early years of the fishery. It is the use of the outside waters by the hand trollers that is less traditional than the use of the outside waters by power trollers. (See catch data for troll fishery, Alaska Department of Fish and Game, 1975 - 1977).

In paragraph 6 of page 5, you state that the Board of Fisheries' legal responsibilities have been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. I suggest that you review the entire report, published May 15, 1979, with special attention to pages 37(f) through 37(j). It should be noted that the auditors' responses on page 40(f) were nonresponsive to the merits of the argument raised in the Department of Fish and Game's response. (See also AS 16.43.350).

Additionally, your conclusion that the Board of Fisheries does not have the economic or social data base to evaluate the restrictions necessary in Alaskan fisheries is incorrect. Regarding the hand troll issue, I would call your attention to the series of hearings held throughout Southeastern Alaskan in 1977 on hand trolling (See below, page 4, paragraph 3). In addition, I also call your attention to the hundreds of fishermen who semi-annually come before the Board of Fisheries to offer both economic and social testimony. Finally, please find appended to this response the Alaska Department of Fish and Game Report to the Board of Fisheries, December 1978.

The final paragraph, which begins on page 5, states that safeguards have not been legislatively established for the Board of Fisheries. Again, I must disagree with this statement since it is incorrect. (See AS 44.62.320, AS 16.05.280). Naturally collateral due process safeguards inhere in the system of judicial review as well. (AS 44.62.-020, .030, .300).

The first full paragraph on page 6 states that "the Federal Fisheries Management Plan disapproved of the high seas hand troll ban because it served no valid conservation purpose." That statement is incorrect. In reality, the reason for the Federal action was stated to be "no valid conservation purpose was served by the distinctions that were drawn between the two types of gear" and the attitude in Washington that the distinction contravened 16 U.S.C. 1851 (emphasis added). The ban on high seas hand trolling reduced the total potential salmon fishing effort on the high seas and prevents further increases in the mixed stock fishery. Consequently, a valid conservation purpose was served by limiting effort. It should be noted that only the Washington, D.C., attorneys for the Department of Commerce took the position that the distinction between hand trollers and power trollers was invalid. An attorney for NOAA in Juneau, Alaska is in agreement with the State's position that the ban on hand trolling in the FCZ is in conformance with the national standards of the FCMA and equal protection under the 14th Amendment to the U.S. Constitution.

In conclusion, I must disagree with the statement that the Board of Fisheries "has adopted a limited entry rather than conservation measure." The Board of Fisheries' action has not slowed entry into the hand troll fishery. Indeed, in 1979, 5,400 permits were issued to commercial hand trollers. This represents an increase of 1,500 over the total number of permits issued in 1978 and an increase of 3,300 over the total number of permits issued in 1975. The number of permits actually fished increased from 1,086 in 1975, to 2,604 in 1978.

Although data are not available in final form for the 1979 high seas troll fishery, I am confident that the reduction in effort occasioned by the ban on hand trolling on the high seas contributed to conservation of the depleted and depressed coho and king salmon stocks present off the coast of Southeastern Alaska. I sincerely appreciate your concern for these depleted and depressed stocks and look forward to hearing your testimony before the Board of Fisheries when they meet to consider finfish proposals in Anchorage December 3-20, 1979.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers-vis-a-vis power trollers.

The fact that entry and the level of potential effort in the hand troll fishery is presently without bounds establishes a reasonable basis for the Board of Fisheries' action in eliminating hand troll fishing for salmon in the FCZ. This key distinction between hand trollers and power trollers, i.e., power trollers' effort has been limited whereas hand trollers' effort is unlimited in magnitude, is a clear basis for differentiating between the two gear types. The fundamental reason for the distinction between the two gear types remains, of course, functional distinction, viz., the method of retrieval.

From January 20 through March 16, 1978, representatives from the Board of Fisheries held hearings on the hand troll fishery in the communities of Ketchikan, Juneau, Sitka, Petersburg, Wrangell, Angoon, and Hoonah. These hearings were held to allow members of the public to present their views and ideas on possible regulation and limitation of the hand troll fishery. At least one Limited Entry Commissioner and a varied number of Department of Fish and Game personnel attended the hearings with Gordon Jensen and/or Jim Beaton, who represented the Alaska Board of Fisheries. Approximately 145 persons testified during the hearings. Extensive testimony was received on the economic and social aspects of the hand troll and power troll fisheries. I must emphasize that the expertise possessed by the members of the Alaska Board of Fisheries, the data presented by the Commercial Fisheries Entry Commission, the data presented by the Alaska Department of Fish and Game, and the extensive testimony received in regulatory sessions of the Board of Fisheries and special hearings the Board has held constitute a thoroughly legitimate data base on which to make decisions.

Your statement that traditional hand troll effort in the FCZ is not well documented is well taken. It is the Department's and the Board's position that the lack of documentation of such "traditional" effort is due to the fact that the effort has been so low as to be negligible in the past. The Board of Fisheries' action, however, was based on the precept that the previously negligible level of effort is subject to rapid expansion, and the depleted and depressed state of the king and coho stocks does not allow for potentially unlimited expansion of the hand troll effort in the FCZ at the expense of the resource for the sole purpose of obtaining data to satisfy other state agencies.

It goes without saying that hand trollers still fish intensively in inside waters in areas where stocks are more discrete. Management of discrete stocks is biologically more sound than a mixed stock fishery, since it allows managers a better chance to avoid overfishing specific stocks. (See Washington Kelpers' Association v. State 502 P 2d 1170, 1172 (Wash., 1972)).

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the Federal Fishery Management Plan.

You are correct in stating that there is an inconsistency between the State regulation and the Fisheries Management Plan. It is not, however, the duty of the State or the Federal Government to give legal counsel to individual fishermen. Your statement that "clearly the Federal law pre-empts" is a legal conclusion unsupported by judicial application to the hand troll issue. There is no substitute for the informed legal counsel which a competent attorney can render to an individual citizen. (See AS 08.08.210). With that caveat in mind, I will comment on the personal opinions of your office staff relating to the pre-emption issue.

Your citation of 16 U.S.C. Sec. 1801 is well taken. However, your unexplained omission of 16 U.S.C. 1856(a) was unfortunate. That section (Sec. 306 P.L. 94-265) states the following: "except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. No state may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries unless such vessel is registered under the laws of such state." Naturally the State of Alaska regulations pertaining to hand trolling in the FCZ are meant to apply only to vessels registered under the laws of the State of Alaska and citizens of Alaska. Similar regulations of the State of Alaska exist for the king crab fishery in the FCZ. Since the Secretary of Commerce has not held a hearing in accordance with the Federal APA as mandated by subsection (b) of Section 306, the exception to State jurisdiction noted above in Section 306 does not apply. Your opinion, therefore, that federal pre-emption is "clear" and federal exclusivity is "clear", is fragile and appears to be unsupported by an understanding of the F.C.M.A. as a whole.

I agree with you that the area of State/Federal jurisdiction is murky and that the action taken by the Secretary of Commerce inures to the detriment of all fishermen concerned. Nonetheless, I am unable to control actions taken in Washington, D.C., and I cannot deliberately abuse Alaska's resources because of unwise action taken on the Federal level.

CONCLUSIONS

I concur with your opinion that the mushrooming of the hand troll fleet calls for increasingly restrictive regulation to protect salmon stocks and to diminish the unfairness to other fishermen who have been subjected to limited entry. I am sure you see the folly of attempting to completely separate regulations in the troll fishery into "economic" regulations and "non-economic" regulations. (See Legislative Audit Report, May 15, 1979, pages 37(g) - 37(i)).

The Board of Fisheries' statutory responsibilities include conservation and development of the State of Alaska's fisheries resources (AS 16.05.221(a)). It should be clear to even the most ingenuous observer that many actions taken for the purpose of conservation will have collateral economic results. In other words, conservation actions may affect the development or utilization of fisheries resources and vice versa. The regulations of the Alaska Board of Fisheries regarding hand trolling in the FCZ are founded on a rational basis. Extensive public testimony has been received over a period of years, forming a massive data base for their decision. The specific action taken by the Board of Fisheries is within their legitimate powers under AS 16.05.251(4), and is not ultra vires as you contend.

COMMENTS ON OMBUDSMAN's RECOMMENDATIONS

1. The Administrative Regulation Review Committee should review 5 AAC 33.330 and 5 AAC 48.090.

No comment.

2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting.

The published deadline for submission of public proposals for consideration by the Board of Fisheries at its December 1979 meeting was September 14. It is now too late for you to submit a proposal regarding the referenced regulations. Nonetheless, to the extent public proposals have been submitted concerning those regulations, they will be legally advertised, and the Board may take regulatory action in those two areas (AS 44.62.190). I suggest that you may wish to offer oral or written testimony to the Board of Fisheries on the referenced regulations. The Board of Fisheries meeting will be held December 3-20, during which public testimony will be received. If you wish to submit written comments, those comments may be submitted directly to the Board's office in Juneau prior to November 23, 1979. Alternatively, you may wish to submit a petition to the Boards under AS 44.62.220.

3. The Commissioner of Fish and Game and the Regional Director of the National Marine Fisheries Service should announce the date that hand trolling pursuant to the Fisheries Management Plan will be permissible or offer negotiation or litigation plans resolving the inconsistencies

in the federal and state regulatory schemes.

I am not now working with NOAA or the National Marine Fisheries Service on the regional level to resolve the inconsistency. You should be aware, however, that the North Pacific Fishery Management Council is strongly in support of the State Board of Fisheries' regulation pertaining to hand trolling in the FCZ. The North Pacific Fishery Management Council is actively pursuing a change in orientation at the Washington, D.C., level, so that the federal Fisheries Management Plan will be brought into line with the state regulations. If you wish further information on the position of the North Pacific Fishery Management Council, I suggest that you contact Jim Branson, Executive Director of the NPFMC in Anchorage.

4. That Limited Entry of the hand troll fishery be undertaken expeditiously.

I agree strongly with this recommendation. The Commercial Fisheries Entry Commission stated to the Board of Fisheries at their 1978 Finfish Regulatory Session that it would take a minimum of two years to institute a limited entry program on the hand troll fishery. If you sincerely desire to expedite the application of a limited entry scheme on the hand troll fishery, I suggest that you contact the Commercial Fisheries Entry Commission.

CODA

Regulation of the Southeastern Alaska troll fishery is a massively complex matter. The issues are multifarious and the solutions are far from easy. The salmon resource is a highly valuable one and allocation of that scarce resource is bound to inflame volatile emotions. I appreciate your deep concern for the maintenance of Alaska's natural resources and fishery resources in particular. I look forward to hearing your testimony in Anchorage at the December 1979 Board of Fisheries meeting and anticipate that you will have specific constructive comments to make at that time. Achieving an equitable solution and a sound management scheme are in the interests of all Alaskans.

I thank you for this opportunity to comment.

Sincerely,

Ronald O. Skoog
Commissioner

Attachment

Ombudsman

MEMO

Date: November 1, 1979

To: Handtroll Complainants

From: Judith Holden, Ombudsman Assistant

Subject: Status of Handtroll Cases

Attached for your information are four documents:

1) September 21, 1979 letter from Frank Flavin to Commissioner Skoog

2) September 25, 1979 letter from Frank Flavin to Commissioner Skoog

3) October 12, 1979 response from Commissioner Skoog to Frank Flavin

4) November 1, 1979 response to the response from Frank Flavin to Commissioner Skoog.

As you will note in the last paragraph of document #4, we have forwarded copies of these enclosures to the Administrative Regulations Review Committee which may or may not take positive appropriate action. For this reason, we are going to leave all handtroll cases included in this investigation in a "pending" state. However, in view of the Commissioner's response (or non-response) the ball is now in another court. If we hear from the Regulation Review Committee, or if additional useful information is forwarded to us, I will be in contact.

Call me, collect, if you have questions and/or concerns after reading the attachments. We are sorry this exercise did not result in a reversal of the Board of Fisheries and Division of Commercial Fisheries actions. As you may know, under our statutes we can not force an action to take place. We can only recommend that it take place when investigation so indicates.

/jah
Enclosures as listed above

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

RECEIVED
NOV 6 1979

November 1, 1979

Mr. Ronald O. Skoog
Commissioner
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0279
J79-0271, J79-0272, J79-0283
J79-0366, J79-0368, J79-0391,
and J79-0398

Dear Commissioner Skoog:

Without belaboring the obvious differences in opinion in this matter, we remain firm in our conviction that the ban on hand trolling in the "outside" waters is unfair, discriminatory, and illegal. Further, we still find questionable, actions of the Board of Fisheries and the Department of Commercial Fisheries regarding that ban.

We feel compelled to offer several brief comments.

1) The Board of Fisheries was created for the purpose of the conservation and development of the fishery resources of the state. We fail to see, for the purpose of conservation, how the banning of hand trollers would lead to an impact on the fishery sufficient enough to be termed an effective conservation effort. To wit, your statement, "It is the Department's and the Board's position that the lack of documentation of such 'traditional' effort is due to the fact that the effort has been so low as to be negligible in the past." Although the hand troll effort is expanding, that expansion has not yet been quantified. Therefore, how could the action in question be termed "sound" conservation management? It is obvious that a hand troll restriction is a limited entry measure.

You further stated, "The level of effort present in a particular fishery corrolates directly to the total number of fish which will be taken, and concomitantly affects total escapement." Again, how effective is the conservation effort if hand troll fishing in the FCZ "had been so low as to be negligible" and the increase is an unknown factor?

2) You state that, "The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers." However, (in addition to the two documents cited in my 9/2/79 letter) a January 16, 1979 News release from the Department of Fish and Game

states, "the Board believes hand trollers should be allowed to harvest 20 per cent of the commercial troll catch of coho salmon. Szabo also said the Board thinks that any future limited entry program for the hand troll fishery should be designed to maintain that 20 per cent level...As an interim measure until a limited entry program can be developed, the Board adopted regulations which will help protect coho salmon stocks in northern Southeast and will begin to reduce hand troll catches to the level the Board wants to maintain." The news release than went on to list regulations which were in effect during the 1979 fishing season. If, in fact, "No formal adoption of that figure has been made by the Board of Fisheries.", they should not be imposing it upon the fishery as is obviously the case at present.

3) As we previously stated, the Fishery Manangement Plan, under a section entitled "Limited Entry Moratorium" states that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added) The Board of Fisheries, has however, precluded 'traditional' fishermen from harvesting salmon in the waters covered under the Fishery Management Plan. You stated, "the use of the outside waters by the hand trollers... is less traditional than the use of the outside waters by power trollers." We do not believe the decision to eliminate fishing in those waters for any traditional fishery lies with the Board of Fisheries. Furthermore the FMP guidelines ~~go~~ to "traditional" in the sense of the individual fisherman ("no eligible person") and not a collective use.

4) We are, and have been, aware of the North Pacific Fishery Management Council's pursuance of a change in "orientation" and find it interesting that the federal plan should "be brought into line with state regulations." Until a change is accomplished the status quo does not favor state regulations which conflict with the federal standard (ie. handtrolling ban).

5) The "safeguards" which you have cited (AS 44.62.320 and AS 16.05.280) are after the fact and do not provide management standards by which agency action is to be measured. They are not on a scale with the legislatively imposed management and procudure safeguards under which the Commercial Fisheries Entry Commission is mandated to operate.

6) We are dismayed by your response to allegation No. 3 on page 5. Throughout this investigation no official, state or federal, seriously questioned federal preemption. It is a sorry system of governmental administration which foists the responsibility, and associated costs, of solving inter-governmental legal disputes onto private citizens. It is truly disheartening to see local federal and state officials "waffle", to buy time, at the expense of individual fishermen who are trying to figure out where they stand.

7) Limited Entry: It is not our function to make a decision

as to the extent of or necessity for hand troll limited entry. However, the economic and social research of all affected fishermen should certainly be undertaken expeditiously so that an informed decision can be made as quickly as possible.

8) If you are speaking to "entry", ~~which~~ when you say the Board of Fisheries has taken no action to "limit" hand trollers, how then can you justify the Board of Fisheries action of "eliminating hand troll fishing for salmon in the FCZ", an action which is in opposition to the FMP? (You have limited by total elimination!)

In regard to your comments regarding testimony by the Ombudsman's Office at your December 1979 Board of Fisheries meeting we operate under AS 24.55.190; not under the procedures you suggest. When a complaint is received and investigated, we take our findings and recommendations directly to the agency involved so they may take corrective measures, as permitted by law, through their own (the agency's) initiative. The Board can certainly review this matter on their own initiative.

We appreciate the complexity and magnitude of the task of regulation of Alaska's fishery resources with which you are challeged. We also encourage your efforts toward achievement of the "equitable" solution and "sound" management scheme you seek "in the interest of all Alaskans."

By copy of this letter we are bringing these complaints and subsequent related materials, to the attention of the Administrative Regulations Review Committee, the Commercial Fisheries Entry Commission, and all complainants involved.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF/JAH/jm

cc: Gregory F. Cook, Executive Director, Board of Fisheries
Steven Pennoyer, Director, Division of Commercial Fisheries
Nick Szabo, Chairman, Board of Fisheries
John Williams, Commissioner, Commercial Entry Fisheries Commission
Senator Don Bennett, Chairman, Administrative Regulation Review Committee

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

November 23, 1979

RECEIVED
NOV 26 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

Mr. Frank Flavin
Ombudsman
State of Alaska
840 "K" Street, Room 203
Anchorage, Alaska 99501

J 79-0270

Re: Ombudsman Complaints J79-0279, J79-0271, J79-0272, J79-0283, J79-0366, J79-0368, J79-0391, and J79-0398

Dear Mr. Flavin:

Thank you for your letter of November 1, 1979, in which you respond to the Department's last letter to you, and make further comments regarding the subject "Ombudsman Complaints."

Your letter omitted reference to several specific points mentioned in our reply of October 12, 1979. Since those points are capital to consideration of the troll salmon issue, I am taking this opportunity to reiterate them briefly and request that you include this material as part of the Department of Fish and Game's formal reply to your inquiry.

1) The ban on hand trolling in the FCZ was enacted by the Board of Fisheries because of the depleted and depressed coho and chinook stocks of Southeast Alaska. Such conditions demand an effective and immediate reduction in the amount of fishing effort directed at those stocks. Permitting expansion of fishing effort is clearly not advisable. It would be irresponsible, at best, for the Board to wait until hand-trolling effort increased before paying heed to it.

2) No State regulation exists at this time which limits the hand troll fleet to 20 per cent of the total troll fleet's salmon catch. Indeed, preliminary figures for the 1979 season show that hand trollers caught slightly over 25 per cent of the total troll catch of salmon in Southeast Alaska. The Board will devote further attention to the troll salmon issue at their December, 1979, regulatory session. I wish to encourage you again to offer any constructive advice you may have to the Board at that time. This is one of the enumerated powers of your Office as listed in AS 24.55.190 and .200, and I urge you to take advantage of it.

11-K11LH

3) The State of Alaska and the Board of Fisheries have the authority to regulate fishing in the FCZ by Alaska residents and by vessels registered under the laws of the State of Alaska. See: AS 16.05.220 - .300, Alaska Constitution, Article VIII, Fisheries Conservation and Management Act of 1976, 16 U.S.C.A. 1856, State v. Sieminski 556 P2d 929 (Ak, 1976), Glenovich v. Noerenberg 346 F. Supp. 1286, 1291-1292 (D. Alaska, 1972). Continued Regulation of all Alaskan fisheries by the State of Alaska as opposed to the Federal government is a primary objective of our Department and the Board of Fisheries.

Sincerely,

for Ronald O. Skoog
Commissioner

cc: Nick Szabo, Chairman,
Alaska Board of Fisheries
Gordon Jensen, Vice Chairman
Alaska Board of Fisheries

Ombudsman

MEMO

Date: May 1, 1980

To: Regulation Review Committee Members

From: Frank Flavin, Ombudsman

Subject: Handtrolling Cases

Attached is a copy of material which was to have been distributed to each of you some months ago, but may not have found its way to your desk.

As you will see, this office investigated quite a number of cases brought to us from handtrollers throughout Southeast Alaska. We made formal recommendations which were not acted upon in a positive manner by the Board of Fisheries. The issue was then brought before your committee, at our request.

We understand that the formal/public hearings have taken place, your committee has discussed the matter, and was waiting until after the Board of Fisheries met to see what action they took. We further understand that if the Board of Fisheries did not take sufficient action, you were to consider the matter further.

We are now in the process of formally closing the handtrolling cases and the ball is in your court. If further input is desired from this office, please contact me. Thank you for your attention to this matter.

FF:bk
Attachment
cc: S.E. Regional Ombudsman Office

Ombudsman
Frank Flavin

RECEIVED
SEP 25 1979
JUNEAU
OFFICE OF THE OMBUDSMAN

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

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September 21, 1979

Ronald O. Skoog
Commissioner
Alaska Department of Fish & Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0270, J79-0271, J79-0272, J79-0283, J79-0366, J79-0368 and J79-0391 & J79-0398

Dear Commissioner Skoog:

Please take notice that the Office of the Ombudsman has completed its investigation of the following allegations:

1. That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction;

2. That the ban on hand trolling in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers;

3. And, that the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan on May 15, 1979.

BACKGROUND

1. At the December 1977 Board of Fisheries meeting, the "Board unanimously adopted the coastal fishing area 6/0, Goll absent. It was moved by Jensen and seconded by Fair that hand troll gear be prohibited in the coastal fishing zone. The motion carried 6/0."

2. In early 1979, in a "Report to the Board of Fisheries on the Southeast Alaska Salmon Troll Fishery," it was stated that the North Pacific Fisheries Management Council had recently concluded a first level of review on the draft of the High Seas Salmon Fishery Off the Coast of Alaska East of 175° East Longitude. The FMP was to undergo further review and redrafting and was expected to be implemented by mid-April, 1979. Included in the "proposed regulations in the plan" was "3. Power troll and sport fish gear only."

3. On May 9, 1979, the Division of Commercial Fisheries, in a "NEWS" release, reminded salmon trollers that the State Regulations adopted at the January, 1979 Alaska Board of Fisheries meeting (which extended state regulatory control of the Southeast troll fishery into the adjacent Seward Biological Influence Zone) were currently in effect. It further stated that anticipated adoption of federal regulations for salmon fisheries in the Fisheries Conservation Zone has caused uncertainties over the applicability of the State regulations offshore. The news release concluded that the NPFMC's Fishery Management Plan and its regulations would not go into effect until they were approved by the Secretary of Commerce and therefore, State fishery regulations concerning salmon trolling (ban on hand trolling) were still effective in both state and federal waters.

4. On May 15, 1979, (earlier than was expected) the assistant administrator for Fisheries, Department of Commerce (NOAA) announced approval of the Fishery Management Plan "with the exception of one provision," and issued on an emergency basis regulations implementing the approved portion. The following appeared in the Federal Register, Vol. 44, No. 98, dated Friday, May 18, 1979:

> provision of the FMP was not approved and will not be implemented. The disapproved portion of the FMP would have prevented fishing by hand trollers in the fishery conservation zone (FCZ). The Assistant Administrator determined that this provision was inconsistent with National Standard 4 of the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq., (Act), because it would have prohibited fishing by certain hand trollers who had historically fished in this area, while it would have allowed power trollers with a similar history to continue to fish in the FCZ. Power trollers use power from their boats' engines to crank their reels, while hand trollers crank their reels manually. It was determined that no valid conservation purpose was served by the distinctions that were drawn between the two types of gear.

The FMP further stated, under Sec. 674.24 Gear restrictions, that "Commercial fishing for salmon in the East Area is permitted only with power or hand-troll gear."

5. Winifred H. Meibohm, Executive Director, National Marine Fisheries Service, in a May 15, 1979 communication to the Juneau NOAA office, related detail on the Fishery Management Plan. Selected portions of that memo include:

"Regulations implementing the approved portion of the FMP are issued on an emergency basis in order to limit fishing effort on the salmon stocks."

"The salmon fishery covered by the FMP occurs throughout the waters off Alaska east of 175° east longitude... divided into two management units...(and) Both management units include the FCZ and waters under Alaskan jurisdiction. All harvest taking place on those portions of the management units within State waters will be regulated by Alaska."

"Optimum yield for this fishery corresponds to the average annual harvest during recent years. The FMP is intended to maintain recent levels of fishing effort on the salmon stocks. The NPFMC determined that an increase in fishing effort would be detrimental to the stocks. Any substantial decrease in fishing effort, on the other hand, would be unacceptable for social and economic reasons, because many individuals are dependent on the ocean salmon fishery."

Under a section entitled "Limited Entry Moratorium" it was stated that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added.)

"With the exception of allowing hand trolling in the FCZ, these management measures are essentially the same as the Alaska regulations governing salmon fishing in waters under its jurisdiction."

"These regulations are effective immediately as emergency regulations."

It was further stated under Subpart A-General, 674.1 Purpose and Scope, (b), that "These regulations govern fishing for salmon by fishing vessels of the United States within that portion of the North Pacific Ocean seaward of Alaska, east of 175° East Longitude, over which the United States exercised exclusive fishery management authority under the Act." (Emphasis added.) The "Act" means the Fishery Conservation and Management Act of 1976, 16 U.S.C. Sec. 1801-1882, as amended.

6. On May 22, 1979, the Division of Commercial Fisheries, in a "NEWS" release, announced the recent enactment of the Fishery Management Plan. It stated that, "The plan and implementing regulations, which became effective on May 15, 1979, fail to regulate the salmon hand troll fishery in offshore waters. In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective." (Emphasis added; regulation referred to is the "ban" on hand trolling offshore.)

7. In a letter to Mr. Robert C. Loomis dated June 13, 1979, Mr. Harry L. Rietze, Director of the Alaska Region, NOAA, NMFS, commented that "salmon regulations cover fishing for salmon and tanner crab in Alaskan waters outside 3 miles. No other domestic fisheries are now covered by federal regulation within the 3-200 mile Fishery Conservation Zone. When regulations for additional fisheries are finalized, permits may be required, at which time NMFS Juneau will begin issuing permits. Regulations implementing the fishery management plan for the salmon fishery in the 3-200 mile Fishery Conservation Zone (FCZ) in the Gulf of Alaska are now in effect. These regulations allow commercial fishing for salmon with troll gear only." Mr. Rietze further stated that "Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters. We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities." The letter did not, however, make it clear whose regulations (Alaska or Federal) were to be followed.

FINDINGS

Allegation No. 1: That the ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

Analysis: The primary Departmental basis for the ban on high seas salmon hand trolling is the increase in effort by hand trollers on depleted King Salmon and heavily utilized coho stocks. [Interviewers - Skoog, Cook, Pennoyer, Cantillon; letter from Commissioner Skoog to Secretary Kreps, April 21, 1979; Memo John G. Gissberg, Assistant Attorney General re: proposed ban on hand trolling in FCZ] The Board of Fisheries intent in

adopting the ban was to limit the total hand troll catch to 20% of the salmon catch. [Performance Review of Commercial Fisheries Entry Commission by Legislative Audit, May 15, 1979, at pages 26 and 376); Memo John Williams, CFEC from Carl Rosier, Deputy Commissioner Alaska Department of Fish and Game, August 21, 1979, re: Limited Entry for Hand Troll Gear.]

There is no doubt that the increase in hand troll effort is a legitimate cause for Board and Department concern and regulatory response. Certainly, the increase calls for restrictive regulation and arguably a lid on the hand troll effort.

However, a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management.

There is little doubt the high seas hand trolling ban and overall hand troll restrictions are in response to the failure of the Limited Entry Commission to implement limited entry in the hand troll fishery. However, the Board of Fisheries regulatory scheme amounts to limited entry without the procedural safeguards and thorough economic and social research required of the Commercial Fisheries Entry Commission.

It is clear from the Board of Fisheries minutes and our interviews with Departmental staff that hand troll fishermen are considered less "traditional," less "beneficial," and less "dependent" than power trollers. [These assumptions will be considered later in this report.]

The legal problems associated with the Board of Fisheries assuming a responsibility delegated to the Commercial Fisheries Entry Commission has been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. Practically, the Board of Fisheries does not have the economic or social data base to decide that one class of fishermen, hand trollers, should be totally restricted from the high seas fishery while another class of fishermen, power trollers, are allowed the privilege.

Social or economic manipulation of the livelihood of the state's citizens should be accomplished, if at all, by elected officials (the Legislature) directly or through appointed officials (the Commercial Fisheries Entry Commission) pursuant to a legislatively established formula with due process safeguards. With the Commercial Fisheries Entry Commission safeguards have been legislatively established--with the Board of Fisheries they have not.

It should be noted that the federal Fisheries Management Plan disapproved the high seas hand troll ban because it served no valid conservation purpose.

With the implementation of the high seas hand trolling ban and maximum catch percentage, the Board of Fisheries moved from managing the methods and means of harvest to managing the composition of the harvesters.

To further restrict or even put a lid on the hand troll effort in the high seas would undoubtedly have a salutory effect on the fish. To ban the hand trollers completely has an unconscionably greater salutory effect on competing fishermen.

Determination: Partially Justified. The increase in hand troll effort necessitates restrictions or arguably a lid on the effort. The Board of Fisheries, in adopting a complete high seas ban, has adopted a limited entry rather than conservation measure.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers.

Analysis: One Departmental basis for the hand trolling ban in the high seas fishery was to prevent the hand troll fishery from becoming more established. [Letter from Commissioner Skoog to Secretary Kreps, April 23, 1979.] Most Departmental personnel interviewed felt that power trolling was the "traditional" use in the high seas area.

Some Departmental officials characterize hand trolling as sport-commercial, "weekend warriors," etc. Others point to a growing "professional" hand trolling effort. One is struck, however, with the lack of concrete data, beyond observation or assumption as to both the size and importance (social and economic) of the hand troll effort both in the inshore and high seas zones.

In his memo on the proposed ban on handtrolling in the FCZ, Assistant Attorney General Gissberg states: "In the past that fleet has generally represented weekend fishermen seeking additional income or tax advantages on their fishing expenditures." This statement is fairly reflective of the Departmental characterization of hand trollers that we encountered. However, we have yet to see any hard data which establishes the income, dependence or "tax sophistication" of the average hand troller, past or present.

Even the total number of hand troll fishermen in the high seas area (Fisheries Conservation Zone) is not tied down. Five hand trollers were "reported" operating by both Gissberg and the federal "Informational Memorandum" on the "Partial Disapproval of the Fishery Management Plan for the High Seas Salmon Fisheries off the Coast of Alaska." It is not at all certain that this figure is accurate as it does not account for "occasional" effort, nor is the information on fish tickets accurate or thorough enough to establish the actual location of catch and the total hand troll effort in the FCZ.

If the total hand troll fishing effort in the FCZ were indeed five hand trollers this fact certainly undermines the conservation necessity of a total ban in lieu of tighter restrictions or a lid on the high seas hand troll effort.

The federal Fisheries Management Plan rejected the proposed hand troll ban as power trollers who had previously fished the area would be permitted to continue but hand trollers would not.

Determination: Justified. Very little data concerning the economic and social aspects of the troll fishery have been compiled yet basic assumptions concerning the nature of this fishery have influenced the allocation of fish between user groups. Traditional hand troll effort in the FCZ is not well documented, nor is there any legitimate or rational reason why traditional hand trollers in the FCZ should be banned and power trollers permitted to continue.

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the federal Fishery Management Plan.

Analysis: On May 15, 1979, the assistant administrator for Fisheries announced the approval of the Fishery Management Plan, but with the disapproval of that portion of the plan that provided for a ban on hand trolling in the FCZ. This created a clear inconsistency between federal regulation and state regulation of hand trolling in the FCZ; the federal plan allowing, the state plan prohibiting.

Since that date neither the State nor federal government have made a reasonable effort to inform the involved fishermen as to which management scheme the fishermen should obey.

Clearly the federal law pre-empts. In State v. Bundrant, et. al., 546 P. 2d 530 (Alaska, 1976) the Alaska Supreme Court stated that the doctrine of pre-emption holds "that when Congress has exercised its regulatory authority over a particular subject

in manner to indicate an intention to deal fully and exclusively therewith, all state regulation in that particular field must yield." (Id. at p. 538)

The language in the Fishery Conservation and Management Act (16 U.S.C. 1801 et. seq.) is clear as to federal exclusivity. The Act provides:

> (b) Purposes.--It is therefore declared to be the purposes of the Congress in this Act--
>
> (1) to take immediate action to conserve and manage the fishery resources found off the coasts of the United States, and the anadromous species and Continental Shelf fishery resources of the United States, by establishing (A) a fishery conservation zone within which the United States will assume exclusive fishery management authority over all fish, except highly migratory species, and (B) exclusive fishery management authority beyond such zone over such anadromous species and Continental Shelf fishery resources;. . .

Despite the clear pre-emption of the FMP allowing hand trolling, State and federal regional officials have finessed the pre-emption question leaving involved fishermen guessing as to if and when the FMP takes effect.

The May 22, 1979 Division of Commercial Fisheries "NEWS" release was at best deceptive in stating:

> "In the absence of federal management and regulatory measures concerning the salmon hand troll fishery offshore, State of Alaska salmon conservation regulations continue to be effective."

The preceeding language implies a failure to act when in fact the hand troll ban was specifically disapproved and a regulatory scheme allowing hand trollers approved.

The director of the Alaska Region, NOAA, NMFS was more artful in dodging the pre-emption question completely and steering Robert C. Loomis, a fisherman, back into the morass of legal uncertainty:

> "Persons fishing with hand troll gear are advised that the State of Alaska has implemented a regulation which prohibits use of hand troll gear in offshore waters.

We strongly urge that hand trollers contact the Alaska Department of Fish and Game or the Alaska Department of Public Safety regarding this State regulation. NMFS Juneau strongly recommends that all Alaska State fishing and landing laws and regulations be reviewed prior to the beginning of fishing activities."

Determination: Justified. State and federal regional officials are leaving the pre-emption question murky until ADF&G and the North Pacific Management Council seek a reversal of the disapproval of the hand troll ban in the FCZ. This is fine for administrators and managers but lousy for the fishermen caught in the middle.

CONCLUSION

The expansion of the hand troll fleet clearly calls for increasingly restrictive regulation to protect salmon stocks and diminish the unfairness to other fishermen who have been subject to limited entry. However, any economic regulation of hand trollers is clearly the province of the legislatively empowered Commercial Fisheries Entry Commission and not the Board of Fisheries. The FCZ hand troll ban and 20% catch limitations both amount to economic regulation and the administrative seizure of control over the livelihoods of State residents without their approval, without the approval of their elected representatives, and without adequate research or procedural safeguards.

Recommendations:

1. The Administrative Regulation Review Committee of the Legislature should review 5 AAC 33.330 and 5 AAC 48.090;

2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting;

3. The commissioner of Fish and Game and regional director, NOAA, NMFS should announce the date that hand trolling pursuant to the FMP will be permissible, or offer negotiation or litigation plans for resolving the inconsistencies in the federal and state regulatory schemes; and

4. That limited entry of the hand troll fishery be undertaken expeditiously.

Thank you for your assistance and consideration in this matter. We look forward to your response within 30 days.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF:rj

cc: Gregory F. Cook
Steven Pennoyer
Nick Szabo
S. E. Regional "O" Office

Ombudsman

Frank Flavin

State of Alaska

Reply to:

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September 25, 1979

RECEIVED
SEP 2[illegible]
JUNEAU
OFFICE OF THE OMBUDSMAN

Ronald O. Skoog
Commissioner
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0279, J79-0271, J79-0272, J79-0283, J79-0366, J79-0368, J79-0391 and *J79-0398 (* not previously listed

Dear Commissioner Skoog:

Several items in our findings issued September 21, 1979, need further explanation.

First, we will not send these findings to the Administrative Regulation Review Committee or the Commercial Fisheries Entry Commission until you have responded, and a copy of that response will be included with our materials.

Second, we will not send copies of these findings to our complainants for two weeks. As you know we do not publicize our findings (if at all) until we have a response from the Department. In fairness to agencies, as we cannot control the activities of our complainants, we try to allow a grace period for the Department in controversial matters.

Finally, recommendation number four is made with the understanding that CFEC is already working on limited entry for hand trolling. Because of the problems brought to light by the Alaska Department of Fish and Game we hope that CFEC evaluation and implementation occur expeditiously.

Thank you for your attention and consideration in this matter.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF:rj
cc: Gregory F. Cook
Steven Pennoyer
Nick Szabo

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

October 12, 1979

RECEIVED
OCT 15 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

Mr. Frank Flavin, Ombudsman
State of Alaska
840 K Street, Room 203
Anchorage, Alaska 99501

Dear Frank:

I have received your letter of September 21, 1979, and will respond to the allegations and findings contained in that letter in the order in which they were made. I have consulted with Steve Pennoyer, Director of the Division of Commercial Fisheries, and Greg Cook, Executive Director of the Alaska Boards of Fisheries and Game, before compiling these comments.

Allegation No. 1. The ban on hand trolling in the high seas salmon fishery is an unfair and illegal economic sanction.

The gist of the analysis appears to be contained in the second full paragraph on page 5, wherein you state "...a regulation establishing a total ban on one gear type in one area and the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." In order to respond to that conclusion I must examine each clause of that lengthy sentence separately.

The Board of Fisheries has established a total ban on one gear type in one area in many different instances. For example, a variety of areas exist in the state that are open exclusively to gillnetting for both the salmon fishery and the herring fishery. Also,

a) Security Cove was made an exclusive gillnet area for herring in December, 1978;

b) In Upper Cook Inlet, no seining north of Anchor Point is allowed, and no drift gillnetting is allowed below Anchor Point;

c) Set gillnetting was eliminated from Lynn Canal in 1972.

Such action by the Board of Fisheries is within their delegated powers to affect the methods and means of take of fisheries resources.

(AS 16.05.251. See also Dow v. Ickes 123 F. 2d 909 (1941)). The ban on hand trolling in the FCZ similarly falls within the Board's powers as a regulation affecting the methods and means of take.

The second clause of the sentence cited above states that "the adoption of a maximum catch percentage for that gear type in the region is economic and social regulation that is deliberate and not incidental to conservation management." First, the Board has never "adopted" a maximum catch percentage for hand trolling. The percentage figure to which you refer, I assume, comes from a January 23, 1979, letter from Greg Cook, Executive Director, Board of Fisheries, to the Commercial Fisheries Entry Commission. In that letter the following language appears, "The Board respectfully wishes to express to the Commission its interest in the development of a program that would consider the following elements: 1) preference for rural over urban hand trollers, and 2) allocation of hand troll permits in a number that will result in an overall ratio of the troll catch of 80 percent power troll and 20 percent hand troll." The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers. The percentage figure to which you refer was a request made to the Commercial Fisheries Entry Commission for their consideration. No formal adoption of that figure has been made by the Board of Fisheries.

Finally, you state that the Board's disposition toward that 80 percent/ 20 percent distribution of the total troll catch is "economic and social regulation that is deliberate and not incidental to conservation management." As stated above, no regulation per se is involved. To claim that limiting effort in a particular fishery is not an aspect of conservation management is not realistic. The level of effort present in a particular fishery corrolates directly to the total number of fish which will be taken, and concomitantly affects total escapement.

In summary, I disagree with all of the conclusions which you state in the second full paragraph on page 5.

In paragraph 3 of page 5, you state that the Board of Fisheries' regulatory scheme "amounts to limited entry." Again I must disagree strongly with your conclusion. As all Alaskans know, a limited entry scheme entails regulating entry into a commercial fishery. (See AS 16.43.100(a)) Entry into the hand troll fishery is still unlimited and is open to anyone with gear and a boat. The Board of Fisheries has taken no action that is tantamount to "limited entry."

In paragraph 4 of page 5, you make the conclusion that hand troll fishermen are considered inferior in several ways in relation to power trollers. Certainly, the Board of Fisheries is well aware that hand trollers antedate power trollers and consequently are more "traditional." However, hand trolling gear has not remained static since the inception of the hand troll fishery. The gear used by hand trollers now is far more sophisticated (more lines, more hooks, more efficient methods of retrieval) than the gear fished by hand trollers during the early years of the fishery. It is the use of the outside waters by the hand trollers that is less traditional than the use of the outside waters by power trollers. (See catch data for troll fishery, Alaska Department of Fish and Game, 1975 - 1977).

In paragraph 6 of page 5, you state that the Board of Fisheries' legal responsibilities have been adequately explored in the recent Legislative audit of the Commercial Fisheries Entry Commission. I suggest that you review the entire report, published May 15, 1979, with special attention to pages 37(f) through 37(j). It should be noted that the auditors' responses on page 40(f) were nonresponsive to the merits of the argument raised in the Department of Fish and Game's response. (See also AS 16.43.350).

Additionally, your conclusion that the Board of Fisheries does not have the economic or social data base to evaluate the restrictions necessary in Alaskan fisheries is incorrect. Regarding the hand troll issue, I would call your attention to the series of hearings held throughout Southeastern Alaskan in 1977 on hand trolling (See below, page 4, paragraph 3). In addition, I also call your attention to the hundreds of fishermen who semi-annually come before the Board of Fisheries to offer both economic and social testimony. Finally, please find appended to this response the Alaska Department of Fish and Game Report to the Board of Fisheries, December 1978.

The final paragraph, which begins on page 5, states that safeguards have not been legislatively established for the Board of Fisheries. Again, I must disagree with this statement since it is incorrect. (See AS 44.62.320, AS 16.05.280). Naturally collateral due process safeguards inhere in the system of judicial review as well. (AS 44.62.-020, .030, .300).

The first full paragraph on page 6 states that "the Federal Fisheries Management Plan disapproved of the high seas hand troll ban because it served no valid conservation purpose." That statement is incorrect. In reality, the reason for the Federal action was stated to be "no valid conservation purpose was served by the distinctions that were drawn between the two types of gear" and the attitude in Washington that the distinction contravened 16 U.S.C. 1851 (emphasis added). The ban on high seas hand trolling reduced the total potential salmon fishing effort on the high seas and prevents further increases in the mixed stock fishery. Consequently, a valid conservation purpose was served by limiting effort. It should be noted that only the Washington, D.C., attorneys for the Department of Commerce took the position that the distinction between hand trollers and power trollers was invalid. An attorney for NOAA in Juneau, Alaska is in agreement with the State's position that the ban on hand trolling in the FCZ is in conformance with the national standards of the FCMA and equal protection under the 14th Amendment to the U.S. Constitution.

In conclusion, I must disagree with the statement that the Board of Fisheries "has adopted a limited entry rather than conservation measure." The Board of Fisheries' action has not slowed entry into the hand troll fishery. Indeed, in 1979, 5,400 permits were issued to commercial hand trollers. This represents an increase of 1,500 over the total number of permits issued in 1978 and an increase of 3,300 over the total number of permits issued in 1975. The number of permits actually fished increased from 1,086 in 1975, to 2,604 in 1978.

Although data are not available in final form for the 1979 high seas troll fishery, I am confident that the reduction in effort occasioned by the ban on hand trolling on the high seas contributed to conservation of the depleted and depressed coho and king salmon stocks present off the coast of Southeastern Alaska. I sincerely appreciate your concern for these depleted and depressed stocks and look forward to hearing your testimony before the Board of Fisheries when they meet to consider finfish proposals in Anchorage December 3-20, 1979.

Allegation No. 2: That the ban on hand trollers in the high seas salmon fishery unfairly discriminates against hand trollers vis-a-vis power trollers.

The fact that entry and the level of potential effort in the hand troll fishery is presently without bounds establishes a reasonable basis for the Board of Fisheries' action in eliminating hand troll fishing for salmon in the FCZ. This key distinction between hand trollers and power trollers, i.e., power trollers' effort has been limited whereas hand trollers' effort is unlimited in magnitude, is a clear basis for differentiating between the two gear types. The fundamental reason for the distinction between the two gear types remains, of course, functional distinction, viz., the method of retrieval.

From January 20 through March 16, 1978, representatives from the Board of Fisheries held hearings on the hand troll fishery in the communities of Ketchikan, Juneau, Sitka, Petersburg, Wrangell, Angoon, and Hoonah. These hearings were held to allow members of the public to present their views and ideas on possible regulation and limitation of the hand troll fishery. At least one Limited Entry Commissioner and a varied number of Department of Fish and Game personnel attended the hearings with Gordon Jensen and/or Jim Beaton, who represented the Alaska Board of Fisheries. Approximately 145 persons testified during the hearings. Extensive testimony was received on the economic and social aspects of the hand troll and power troll fisheries. I must emphasize that the expertise possessed by the members of the Alaska Board of Fisheries, the data presented by the Commercial Fisheries Entry Commission, the data presented by the Alaska Department of Fish and Game, and the extensive testimony received in regulatory sessions of the Board of Fisheries and special hearings the Board has held constitute a thoroughly legitimate data base on which to make decisions.

Your statement that traditional hand troll effort in the FCZ is not well documented is well taken. It is the Department's and the Board's position that the lack of documentation of such "traditional" effort is due to the fact that the effort has been so low as to be negligible in the past. The Board of Fisheries' action, however, was based on the precept that the previously negligible level of effort is subject to rapid expansion, and the depleted and depressed state of the king and coho stocks does not allow for potentially unlimited expansion of the hand troll effort in the FCZ at the expense of the resource for the sole purpose of obtaining data to satisfy other state agencies.

It goes without saying that hand trollers still fish intensively in inside waters in areas where stocks are more discrete. Management of discrete stocks is biological. more sound than a mixed stock fishery, since it allows managers a better chance to avoid overfishing specific stocks. (See Washington Kelpers' Association v. State 502 P 2d 1170, 1172 (Wash., 1972)).

Allegation No. 3: That the State regulation imposing the hand trolling ban in the Fishery Conservation Zone is illegal in light of the approval of the Federal Fishery Management Plan.

You are correct in stating that there is an inconsistency between the State regulation and the Fisheries Management Plan. It is not, however, the duty of the State or the Federal Government to give legal counsel to individual fishermen. Your statement that "clearly the Federal law pre-empts" is a legal conclusion unsupported by judicial application to the hand troll issue. There is no substitute for the informed legal counsel which a competent attorney can render to an individual citizen. (See AS 08.08.210). With that caveat in mind, I will comment on the personal opinions of your office staff relating to the pre-emption issue.

Your citation of 16 U.S.C. Sec. 1801 is well taken. However, your unexplained omission of 16 U.S.C. 1856(a) was unfortunate. That section (Sec. 306 P.L. 94-265) states the following: "except as provided in subsection (b), nothing in this Act shall be construed as extending or diminishing the jurisdiction or authority of any state within its boundaries. No state may directly or indirectly regulate any fishing which is engaged in by any fishing vessel outside its boundaries unless such vessel is registered under the laws of such state." Naturally the State of Alaska regulations pertaining to hand trolling in the FCZ are meant to apply only to vessels registered under the laws of the State of Alaska and citizens of Alaska. Similar regulations of the State of Alaska exist for the king crab fishery in the FCZ. Since the Secretary of Commerce has not held a hearing in accordance with the Federal APA as mandated by subsection (b) of Section 306, the exception to State jurisdiction noted above in Section 306 does not apply. Your opinion, therefore, that federal pre-emption is "clear" and federal exclusivity is "clear", is fragile and appears to be unsupported by an understanding of the F.C.M.A. as a whole.

I agree with you that the area of State/Federal jurisdiction is murky and that the action taken by the Secretary of Commerce inures to the detriment of all fishermen concerned. Nonetheless, I am unable to control actions taken in Washington, D.C., and I cannot deliberately abuse Alaska's resources because of unwise action taken on the Federal level.

CONCLUSIONS

I concur with your opinion that the mushrooming of the hand troll fleet calls for increasingly restrictive regulation to protect salmon stocks and to diminish the unfairness to other fishermen who have been subjected to limited entry. I am sure you see the folly of attempting to completely separate regulations in the troll fishery into "economic" regulations and "non-economic" regulations. (See Legislative Audit Report, May 15, 1979, pages 37(g) - 37(i)).

The Board of Fisheries' statutory responsibilities include conservation and development of the State of Alaska's fisheries resources (AS 16.05.221(a)). It should be clear to even the most ingenuous observer that many actions taken for the purpose of conservation will have collateral economic results. In other words, conservation actions may affect the development or utilization of fisheries resources and vice versa. The regulations of the Alaska Board of Fisheries regarding hand trolling in the FCZ are founded on a rational basis. Extensive public testimony has been received over a period of years, forming a massive data base for their decision. The specific action taken by the Board of Fisheries is within their legitimate powers under AS 16.05.251(4), and is not ultra vires as you contend.

COMMENTS ON OMBUDSMAN's RECOMMENDATIONS

1. The Administrative Regulation Review Committee should review 5 AAC 33.330 and 5 AAC 48.090.

No comment.

2. The Board of Fisheries should reconsider 5 AAC 33.330 and 5 AAC 48.090 at its next meeting.

The published deadline for submission of public proposals for consideration by the Board of Fisheries at its December 1979 meeting was September 14. It is now too late for you to submit a proposal regarding the referenced regulations. Nonetheless, to the extent public proposals have been submitted concerning those regulations, they will be legally advertised, and the Board may take regulatory action in those two areas (AS 44.62.190). I suggest that you may wish to offer oral or written testimony to the Board of Fisheries on the referenced regulations. The Board of Fisheries meeting will be held December 3-20, during which public testimony will be received. If you wish to submit written comments, those comments may be submitted directly to the Board's office in Juneau prior to November 23, 1979. Alternatively, you may wish to submit a petition to the Boards under AS 44.62.220.

3. The Commissioner of Fish and Game and the Regional Director of the National Marine Fisheries Service should announce the date that hand trolling pursuant to the Fisheries Management Plan will be permissible or offer negotiation or litigation plans resolving the inconsistencies

in the federal and state regulatory schemes.

I am not now working with NOAA or the National Marine Fisheries Service on the regional level to resolve the inconsistency. You should be aware, however, that the North Pacific Fishery Management Council is strongly in support of the State Board of Fisheries' regulation pertaining to hand trolling in the FCZ. The North Pacific Fishery Management Council is actively pursuing a change in orientation at the Washington, D.C., level, so that the federal Fisheries Management Plan will be brought into line with the state regulations. If you wish further information on the position of the North Pacific Fishery Management Council, I suggest that you contact Jim Branson, Executive Director of the NPFMC in Anchorage.

4. That Limited Entry of the hand troll fishery be undertaken expeditiously.

I agree strongly with this recommendation. The Commercial Fisheries Entry Commission stated to the Board of Fisheries at their 1978 Finfish Regulatory Session that it would take a minimum of two years to institute a limited entry program on the hand troll fishery. If you sincerely desire to expedite the application of a limited entry scheme on the hand troll fishery, I suggest that you contact the Commercial Fisheries Entry Commission.

CODA

Regulation of the Southeastern Alaska troll fishery is a massively complex matter. The issues are multifarious and the solutions are far from easy. The salmon resource is a highly valuable one and allocation of that scarce resource is bound to inflame volatile emotions. I appreciate your deep concern for the maintenance of Alaska's natural resources and fishery resources in particular. I look forward to hearing your testimony in Anchorage at the December 1979 Board of Fisheries meeting and anticipate that you will have specific constructive comments to make at that time. Achieving an equitable solution and a sound management scheme are in the interests of all Alaskans.

I thank you for this opportunity to comment.

Sincerely,

Ronald O. Skoog
Commissioner

Attachment

Ombudsman

MEMO

Date: November 1, 1979

To: Handtroll Complainants

From: Judith Holden, Ombudsman Assistant

Subject: Status of Handtroll Cases

Attached for your information are four documents:

1) September 21, 1979 letter from Frank Flavin to Commissioner Skoog

2) September 25, 1979 letter from Frank Flavin to Commissioner Skoog

3) October 12, 1979 response from Commissioner Skoog to Frank Flavin

4) November 1, 1979 response to the response from Frank Flavin to Commissioner Skoog.

As you will note in the last paragraph of document #4, we have forwarded copies of these enclosures to the Administrative Regulations Review Committee which may or may not take positive appropriate action. For this reason, we are going to leave all handtroll cases included in this investigation in a "pending" state. However, in view of the Commissioner's response (or non-response) the ball is now in another court. If we hear from the Regulation Review Committee, or if additional useful information is forwarded to us, I will be in contact.

Call me, collect if you have questions and/or concerns after reading the attachments. We are sorry this exercise did not result in a reversal of the Board of Fisheries and Division of Commercial Fisheries actions. As you may know, under our statutes we can not force an action to take place. We can only recommend that it take place when investigation so indicates.

/jah
Enclosures as listed above

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

November 1, 1979

Mr. Ronald O. Skoog
Commissioner
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints J79-0279
J79-0271, J79-0272, J79-0283
J79-0366, J79-0368, J79-0391,
and J79-0398

Dear Commissioner Skoog:

Without belaboring the obvious differences in opinion in this matter, we remain firm in our conviction that the ban on hand trolling in the "outside" waters is unfair, discriminatory, and illegal. Further, we still find questionable, actions of the Board of Fisheries and the Department of Commercial Fisheries regarding that ban.

We feel compelled to offer several brief comments.

1) The Board of Fisheries was created for the purpose of the conservation and development of the fishery resources of the state. We fail to see, for the purpose of conservation, how the banning of hand trollers would lead to an impact on the fishery sufficient enough to be termed an effective conservation effort. To wit, your statement, "It is the Department's and the Board's position that the lack of documentation of such 'traditional' effort is due to the fact that the effort has been so low as to be negligible in the past." Although the hand troll effort is expanding, that expansion has not yet been quantified. Therefore, how could the action in question be termed "sound" conservation management? It is obvious that a hand troll restriction is a limited entry measure.

You further stated, "The level of effort present in a particular fishery corrolates directly to the total number of fish which will be taken, and concomitantly affects total escapement." Again, how effective is the conservation effort if hand troll fishing in the FCZ "had been so low as to be negligible" and the increase is an unknown factor?

2) You state that, "The Board of Fisheries has not adopted any regulations which impose a maximum catch percentage on hand trollers." However, (in addition to the two documents cited in my 9/2/79 letter) a January 16, 1979 News release from the Department of Fish and Game

states, "the Board believes hand trollers should be allowed to harvest 20 per cent of the commercial troll catch of coho salmon. Szabo also said the Board thinks that any future limited entry program for the hand troll fishery should be designed to maintain that 20 per cent level...As an interim measure until a limited entry program can be developed, the Board adopted regulations which will help protect coho salmon stocks in northern Southeast and will begin to reduce hand troll catches to the level the Board wants to maintain." The news release than went on to list regulations which were in effect during the 1979 fishing season. If, in fact, "No formal adoption of that figure has been made by the Board of Fisheries.", they should not be imposing it upon the fishery as is obviously the case at present.

3) As we previously stated, the Fishery Manangement Plan, under a section entitled "Limited Entry Moratorium" states that, "Under those regulations, (limited entry) this maximum number would be exceeded only to the extent necessary to ensure that no eligible person who has been dependent on this fishery would be precluded from harvesting salmon." (Emphasis added) The Board of Fisheries, has however, precluded 'traditional' fishermen from harvesting salmon in the waters covered under the Fishery Management Plan. You stated, "the use of the outside waters by the hand trollers... is less traditional than the use of the outside waters by power trollers." We do not believe the decision to eliminate fishing in those waters for any traditional fishery lies with the Board of Fisheries. Furthermore the FMP guidelines apply to "traditional" in the sense of the individual fisherman ("no eligible person") and not a collective use.

4) We are, and have been, aware of the North Pacific Fishery Management Council's pursuance of a change in "orientation" and find it interesting that the federal plan should "be brought into line with state regulations." Until a change is accomplished the status quo does not favor state regulations which conflict with the federal standard (ie. handtrolling ban).

5) The "safeguards" which you have cited (AS 44.62.320 and AS 16.05.280) are after the fact and do not provide management standards by which agency action is to be measured. They are not on a scale with the legislatively imposed management and procudure safeguards under which the Commercial Fisheries Entry Commission is mandated to operate.

6) We are dismayed by your response to allegation No. 3 on page 5. Throughout this investigation no official, state or federal, seriously questioned federal preemption. It is a sorry system of governmental administration which foists the responsibility, and associated costs, of solving inter-governmental legal disputes onto private citizens. It is truly disheartening to see local federal and state officials "waffle", to buy time, at the expense of individual fishermen who are trying to figure out where they stand.

7) Limited Entry: It is not our function to make a decision

as to the extent of or necessity for hand troll limited entry. However, the economic and social research of all affected fishermen should certainly be undertaken expeditiously so that an informed decision can be made as quickly as possible.

8) If you are speaking to "entry", ~~which~~ when you say the Board of Fisheries has taken no action to "limit" hand trollers, how then can you justify the Board of Fisheries action of "eliminating hand troll fishing for salmon in the FCZ", an action which is in opposition to the FMP? (You have limited by total elimination!)

In regard to your comments regarding testimony by the Ombudsman's Office at your December 1979 Board of Fisheries meeting we operate under AS 24.55.190; not under the procedures you suggest. When a complaint is received and investigated, we take our findings and recommendations directly to the agency involved so they may take corrective measures, as permitted by law, through their own (the agency's) initiative. The Board can certainly review this matter on their own initiative.

We appreciate the complexity and magnitude of the task of regulation of Alaska's fishery resources with which you are challeged. We also encourage your efforts toward achievement of the "equitable" solution and "sound" management scheme you seek "in the interest of all Alaskans."

By copy of this letter we are bringing these complaints and subsequent related materials, to the attention of the Administrative Regulations Review Committee, the Commercial Fisheries Entry Commission, and all complainants involved.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF/JAH/jm

cc: Gregory F. Cook, Executive Director, Board of Fisheries
Steven Pennoyer, Director, Division of Commercial Fisheries
Nick Szabo, Chairman, Board of Fisheries
John Williams, Commissioner, Commercial Entry Fisheries Commission
Senator Don Bennett, Chairman, Administrative Regulation Review Committee

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

November 23, 1979

RECEIVED
NOV 28 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

Mr. Frank Flavin
Ombudsman
State of Alaska
840 "K" Street, Room 203
Anchorage, Alaska 99501

J 79-0279

Re: Ombudsman Complaints J79-0279, J79-0271, J79-0272, J79-0283, J79-0366, J79-0368, J79-0391, and J79-0398

Dear Mr. Flavin:

Thank you for your letter of November 1, 1979, in which you respond to the Department's last letter to you, and make further comments regarding the subject "Ombudsman Complaints."

Your letter omitted reference to several specific points mentioned in our reply of October 12, 1979. Since those points are capital to consideration of the troll salmon issue, I am taking this opportunity to reiterate them briefly and request that you include this material as part of the Department of Fish and Game's formal reply to your inquiry.

1) The ban on hand trolling in the FCZ was enacted by the Board of Fisheries because of the depleted and depressed coho and chinook stocks of Southeast Alaska. Such conditions demand an effective and immediate reduction in the amount of fishing effort directed at those stocks. Permitting expansion of fishing effort is clearly not advisable. It would be irresponsible, at best, for the Board to wait until hand-trolling effort increased before paying heed to it.

2) No State regulation exists at this time which limits the hand troll fleet to 20 per cent of the total troll fleet's salmon catch. Indeed, preliminary figures for the 1979 season show that hand trollers caught slightly over 25 per cent of the total troll catch of salmon in Southeast Alaska. The Board will devote further attention to the troll salmon issue at their December, 1979, regulatory session. I wish to encourage you again to offer any constructive advice you may have to the Board at that time. This is one of the enumerated powers of your Office as listed in AS 24.55.190 and .200, and I urge you to take advantage of it.

3) The State of Alaska and the Board of Fisheries have the authority to regulate fishing in the FCZ by Alaska residents and by vessels registered under the laws of the State of Alaska. See: AS 16.05.220 - .300, Alaska Constitution, Article VIII, Fisheries Conservation and Management Act of 1976, 16 U.S.C.A. 1856, State v. Sieminski 556 P2d 929 (Ak, 1976), Glenovich v. Noerenberg 346 F. Supp. 1286, 1291-1292 (D. Alaska, 1972). Continued Regulation of all Alaskan fisheries by the State of Alaska as opposed to the Federal government is a primary objective of our Department and the Board of Fisheries.

Sincerely,

Donald Collinsworth

for Ronald O. Skoog
Commissioner

cc: Nick Szabo, Chairman,
Alaska Board of Fisheries
Gordon Jensen, Vice Chairman
Alaska Board of Fisheries

SUPPORTIVE MATERIAL FOR THE 1980 REGULATORY PROGRAM

FOR THE

SOUTHEAST ALASKA

TROLL SALMON FISHERY

(FINAL DRAFT)

November 1979

Alaska Department of Fish and Game

Juneau, Alaska 99801

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Summary

Regulatory Recommendations For The 1980 Season

In order to address the objectives and problems set forth in this regulatory program, existing State and Federal troll fishery regulations should continue in force. In addition, recommendations are proposed that will enhance the conservation of chinook and coho salmon stocks in S.E. Alaska and attempt to stabilize the interception of non-Alaska chinook salmon at present levels. The following recommended additions to existing regulations will require complementary action by both the Alaska Board of Fisheries and the North Pacific Fishery Management Council.

1. Hand trolling should be prohibited in that portion of the FCZ adjacent to the State's waters prohibiting hand trolling.

   This would prevent a potential increase in troll effort and also contribute to consistent State/Federal regulation of the coastal/offshore fishery.

2. In waters bounded by a line projected west of Cape Spencer at 58°12'30" N., 136°39'00" W., to a point at 58°12'30" N., 137°08'30" W., thence to a point at 59°21'00" N., 139°47'30" W., then east to the mouth of the Dangerous River at 59°21'00" N., 139°19'00" W., the troll season should be from April 15 through June 30 except that coho salmon may be taken only from June 15 through June 30.

Closure of this coastal strip (Cape Spencer to Dangerous River) to troll gear after July 1 is recommended for conservation of coho and immature chinook salmon.

3. In waters bounded by a line projected west from the mouth of the Dangerous River at 59°21'00" , 139°19'00" W. to a point at 59°21'00" N., 139°47'30" W., then to a point at 59°43'00" N., 141°08'30" W., then east to Sitkage Bluffs at 59°43'00" N., 140°39'00" W., the following regulations should be in effect:

   A. The season for troll gear will be from April 15 through September 20, except that coho salmon may be taken only from June 15 through September 20.

   B. From the first Monday in July through September 20 the weekly fishing period for troll gear should be from 12:01 p.m. Monday through 12:00 noon Friday.

   This is intended to check effort increases on Yakutat district coho and still allow the established local troll fishery to continue.

4. The maximum number of lines fished from a troll vessel should be four.

5. The maximum number of power gurdies allowed on a power troll vessel should be four.

These (4 and 5) are intended to curtail an increase in troll effort and harvest.

6. No salmon should be mutilated or otherwise disfigured in any manner which prevents determining the legal minimum size requirement or the species of the fish.

   There are indications that a market may exist for salmon fillets. This regulation is intended to prevent butchering of salmon on the fishing grounds which would make it impossible to enforce size limits.

7. No troll vessel may fish for salmon in an area closed to coho salmon fishing if it has coho salmon aboard.

   After the close of the coho troll season commercial trolling boats might continue to fish for other salmon species, making it difficult to enforce the closing of the coho season. This is especially true for freezer boats and trip boats where it would be impossible to tell when a fish was landed if held on board. This regulation would enhance enforcement of the coho season closure.

FORWARD

In order to provide the reader with a reasonably quick understanding of the management program presented herein, the main text contains information relevant to chinook and coho resource problems, current management policies, and proposed alterations to the current management system with adequate, though limited, supportive discussion. Additional supportive materials and information with respect to resource considerations, the interaction of various fisheries conducted in the troll fishery area, supplemental production effects, special data reports and other items of relevance to the chinook and coho resources are presented in Appendices A - K.

Literature references in the text are designated by appendix. Literature references in the Appendices are documented for each appendix where appropriate.

INTRODUCTION

This document addresses the chinook (Oncorhynchus tshawytscha) and coho (O. Kisutch) salmon resources throughout Southeast Alaska -- from Cape Suckling southeast to Dixon Entrance; in State and Federal waters. The chinook and coho fisheries are a significant segment of the socioeconomic and ecological character of Southeast Alaska.

There are well established life styles and industry components that are oriented to these salmon resources and their existing management regimes. In particular, an extensive troll fishery has developed throughout the area. Dramatic changes in these institutions would not come without disruptive socioeconomic costs. On the other hand, if the resources on which this fishery is dependent are allowed to decline catastrophic changes will occur nonetheless. The continued existance of these institutions at present levels will require some changes in conduct of the fishery.

The stocks (wild and hatchery) of chinook and coho originate from the Pacific states, Canada and Alaska. The abundance and distribution of all stocks are not well established and many stocks intermingle to an unknown degree making the management of this mixed stock fishery very complex.

Annual catches in recent years have often exceeded 325,000 chinook and 950,000 coho. These substantial harvests though, are considerably lower than levels produced between the 1930s and the 1950s.

The status of these stocks coupled with the nature of the fishing industry has generated dilemmatic problems in management.

HISTORY OF MANAGEMENT PLANS

Prior to 1979 no formal management plan document was prepared for all or part of the chinook and coho resources of Southeast Alaska. Management strategies and rationale were annually presented to the Alaska Board of Fisheries and reflected in their Commercial Fishing Regulations.

The North Pacific Management Council, whose jurisdiction covers all of the FCZ seaward of Alaska, assigned a high priority to the Southeast Alaska salmon fishery and included it in the first round of plans to be prepared for the U. S. Secretary of Commerce. This priority was based on the recognition of the significance of the salmon resources of the northwest coast and a coastwide concern for the status of these salmon resources.

A draft FMP was released by the Council for public comment in the fall of 1977. That draft concentrated on the troll fishery in the FCZ which is only a segment of the entire chinook and coho fishery in Southeast Alaska. It proposed time and area restrictions that received strong negative response from industry which claimed: 1) insufficient biological and fishery data; and 2) insufficient analyses of socioeconomic impacts. The draft was retracted by the Council and in the fall of the following year, 1978, another draft was released that proposed an interim plan. With an objective to control

the expansion of the offshore fishery it seemed necessary to have a plan with implementing Federal regulations in place for the 1979 fishery. This would ensure that for all vessels fishing the FCZ (whether registered under the laws of the State of Alaska or not) the following significant restrictions would apply: no trolling east of Cape Suckling; minimum size on chinook; limited entry on power trollers; and a prohibition of hand trolling. In May 1979, the Secretary approved and implemented this plan except for the ban on hand trolling. The Secretary's plan is "interim" because the need was recognized for a comprehensive plan for all fisheries on chinook and coho in all waters of Southeast Alaska -- State and Federal.

THE CHINOOK AND COHO PLAN

The Alaska Department of Fish and Game proposed to develop a fishery management plan for the chinook and coho salmon resources throughout all of Southeast Alaska. It would also recognize the importance of non-Alaskan chinook stocks to the coastal troll fishery and the need for coordinated coastwide management of these stocks.

The first version of this plan is presented in this document. It makes no claim to being a final, comprehensive plan. The complexity and dynamics of the resources and the management of their utilization will require additional versions. It is intended that management will enhance as more information is learned about the stocks and the fisheries.

This current document emphasizes the problems associated with the chinook and coho resources; the existing management approach; and the need for modifying the regulatory program for the 1980 fishery.

There are five major items which may cause significant future impacts which must be resolved before a truly comprehensive plan can be effective. These are:

1. The status of U. S. - Canada salmon negotiations;

2. the outcome of the Indian treaty entitled allocations on the Pacific Coast;

3. development of a hand troll limited entry system;

4. acquisition of data on stock contributions of other Alaska origin chinook and coho and analysis of data from non-Alaskan origin chinook; and

5. results of a biometric analysis investigating the feasibility of "time-area management" in the Southeast troll fishery. (Predominantly funded by NPFMC Contract # 79-4)

The time required to resolve: items 1, 2, and 3 is difficult to predict and out of the hands of the current PDT. Item 4 is dependent on Alaskan tag returns in 1981 and 1982, and the availability of coastwide harvest and tag return files. Item 5 is scheduled for completion in January 1981.

PROBLEM STATEMENT

Four major problems confront management of the chinook and coho resources in Southeast Alaska: 1) depleted stocks of native chinook; 2) excessive harvest rates on coho; 3) the character of the troll fishery; and 4) coordinated coastwide management.

Depleted Stocks of Native Chinook

Chinook stocks native to Southeast Alaska have historically supported gill net harvests near the mouths of large mainland rivers, and commercial troll and limited recreational fisheries in most inshore waters. Catch records for the chinook gill net fisheries indicate historical harvest levels at as much as ten times present levels. Little is known of the relative troll harvest of native Alaskan chinook during this period of historically high gill net harvests but it can be assumed that these stocks also contributed to the troll fishery at levels substantially higher than at present (Appendix B, Chinook and Coho Resource Considerations).

There has been little measurable environmental degradation of the watersheds of Alaskan chinook rivers. Neither has there been any indication of detrimental ecological disturbance (besides that caused by fishing) of chinook ocean life. Therefore, the management of the commercial net and

troll fisheries and the recreational fishery must bear the responsibility for the decline in Alaskan chinook production.

In recent years, directed gill net fisheries for chinook have been eliminated by regulation, although an incidental harvest of chinook occurs in the chum, sockeye, and pink salmon gill net fisheries. Certain levels of incidental harvests cannot be avoided as chinook run timing overlaps with significant runs of pink, sockeye and chum salmon. Therefore, management must take into account this incidental harvest of chinook when providing for the escapement from the troll fishery.

Troll gear continues to harvest chinook of Alaskan origin in areas adjacent to (but not within) terminal areas but in unknown numbers (due to the mixed nature of the stocks). Unfortunately, the restrictions on chinook harvests in terminal areas by net and troll gear have not increased escapements substantially (ADF&G unpublished escapement reports 1928-78).

Excessive Harvest Rates on Coho

Interception by commercial fisheries of coho from certain Southeast Alaska streams was measured in 1974 (pigment marking) and 1978 (coded wire tagging). (See Chinook and Coho Resource Considerations, Appendix B). Harvest by the commercial troll and gill net fisheries for several coho stocks were calculated to be in excess of 80 percent of the return. These interceptions occurred in offshore, coastal and inshore waters. Although the information from these studies was limited in geographical coverage (northern Southeast Alaska), it amply demonstrates the ability of present commercial troll and net fleets to effectively harvest coho stocks at great distances from their natal streams.

Coho are harvested by all gear types with the combined purse seine and gill net harvest usually being less that 50 percent of the total harvest by all gear types. Troll gear generally harvests in excess of 50 percent of the entire commercial coho catch.

Net fisheries are discouraged by regulation (time and area closures) from targeting on coho. However, there is little control over the troll fleet (particularly in coastal and offshore waters) during the coho season. There is no closed season for troll gear in coastal and offshore waters from June 15 to September 20 (which encompasses the time of peak coho harvests). In fact, during weekly closures of the gill net season trolling continues in areas adjacent to the closed areas. This results, for example, in the management of gill net fisheries for chums in which there will be an incidental harvest of coho when as much as 75 - 80 percent of the return of some coho stocks may have already been harvested by troll gear. This can force the premature closure of inshore net fisheries to protect remaining coho for escapement. Thus, incidental harvests of coho salmon by the net fisheries controls major harvests of other salmon species since coho harvestable surplus above that needed for escapement may have already occurred in the troll fishery.

The Troll Fishery

The nature of the troll fishery itself creates problems for fisheries management. A large percentage of the salmon taken in the commercial troll harvest are caught at great distances from their natal streams. Trollers concentrate on schools of feeding salmon comprised of fish from many different stocks. A large ocean fishery coupled with little information on stock definition (stock origins, time and area distributions of stocks, and stock contribution to fisheries) make it difficult to manage for inside fisheries and escapements.

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Fishery managers have responded to identified chinook and coho problems with closures for troll and/or net fisheries near terminal areas where the stocks are more identifiable. The effect of these closures has been minimized by the ability of the troll fleet to move outside the closures and continue fishing on mixed stocks. Where chinook salmon is the species of concern, closures to protect adult spawners results in additional effort being placed on immature feeding fish outside of the closure boundaries. Fishing pressure by troll gear on mixed stocks of chinook and coho salmon now appears to be approaching an intensity which does not allow enough escapement for some stocks to even reach the terminal areas. A recent tagging study on major Lynn Canal and Stephens Passage coho stocks has established that this mixed stock overfishing is occurring in some areas (Appendix B). The need to provide an incidental catch for "inside" net fisheries in or near terminal areas further complicates this problem.

Troll gear efficiency is compounded by the long time period that salmon are available to this gear type and the large area that can be fished. An individual salmon stock may be exploited for several weeks or years and pass through several concentrations of troll gear before reaching its natal stream. In effect, there is a sequence of intercepting fisheries for chinook and coho. From the northern limit of the troll fishery at Cape Suckling, south to Dixon Entrance, the troll fleet is not evenly dispersed but can be seen in groups of from five to two hundred vessels. These congregations of vessels directly correspond to known coho and chinook interception locations along the coast, and the fleet is capable of rapid re-deployment when migration behavior patterns of coho or chinook salmon develop concentrations in new or different areas. Maturing chinook and coho must pass through one or several of these congregations of power and hand troll vessels to reach the inside/terminal areas where they may be subjected to a net fishery.

Not only has the troll fishery been relatively unrestricted from intercepting chinook and coho prior to exposure to an inside net fishery, but the troll fleet (hand and power) in the past decade has expanded its capability to harvest these fish due to expanded fleet size and vessel efficiency.

The number of power troll vessel operators was limited in 1974 by the Alaska Commercial Fisheries Entry Commission, but vessel quality and expressed fishing effort have increased in spite of this limit. Hand troll gear units are not limited in number and there are presently approximately 4,000 hand troll permits. Because individual hand troll units are generally less effective than power troll units, the collective catch is less than the power troll catch. However, hand troll vessels usually operate at less expense than power troll vessels and may fish in areas that power trollers cannot profitably fish. A significant portion of hand trollers in recent years, particularly those adjacent to urban areas, have a low level of economic dependence on the fishery. Recent increases in hand troll gear units may add effort on stocks that are already in jeopardy.

A characteristic of the troll fishery is the occurrence of chinook "shakers" - fish that are required to be returned to the water because they are less than the minimum legal size. This legal size serves two functions. First, it established "three ocean fish" as the recruit age (scale analyses determined 28 inches as the size to separate two year from three year fish). Second, it assumes there is a potential gain of growth by returning undersized fish for future harvest if the growth is greater than losses to natural and "hooking" mortalities and escapement. However, this assumption may not be valid for the Southeast fishery in areas of high concentrations of immature chinook and if hooking mortalities range as high as 30 to 70 percent (as shown by studies of delayed mortalities, Appendix B).

Coastwide Coordinated Management

Tagging studies have clearly shown that the chinook resource off Southeast Alaska is a composite of stocks originating as far south as Oregon. Further, some of these fish are also exposed to established ocean fisheries from Canada through the Pacific coast states prior to spawning.

However, the distribution, abundance and conservation needs of these stocks are not well established. The total harvest by all user groups (coastwide) must not exceed the stock's capability to reproduce itself on a sustained yield basis. If the harvestable surplus is exceeded the stock will become depressed below its full production potential and eventually depleted. Until international, Federal and State agencies clarify the conservation and allocation of these fish (through objectives and rationalized management regimes) Alaska will continue recent harvest rates and apply conservation measures where research and fishery performance clearly identifies the need and solutions.

These problems must be addressed jointly by coastal management agencies as the fisheries of all areas are dependent upon the continued health of the resource. Savings in one area must not be simply passed to another fishery, but must also be passed through that fishery into the necessary spawning escapement.

MANAGEMENT OBJECTIVES

The regulatory regime for the harvest of chinook and coho salmon stocks in Southeast Alaska was formulated to realize the following management objective:

Increase the chinook and coho production for Southeast Alaska fisheries by:

A. 1) Maintaining present escapement levels for healthy native coho stocks; and,

2) Maintaining the present interception proportion from non-Alaskan chinook stocks (until biological, socioeconomical and/or political sources justify a reason to change this proportion).

B. 1) Increasing the escapement of native Southeast Alaskan chinook and depleted coho stocks;

2) Reducing the harvest and the "hooking" mortalities of salmon having significant remaining growth potential; and,

3) Utilizing hatchery and habitat manipulation programs.

To increase production, part A above addresses the need to maintain (i.e., not reduce) certain segments of the resources and their fisheries. Efforts should be made to protect remaining healthy runs of coho and, until the status of non-Alaskan stocks are clarified and coastwide management addressed, production from these stocks should not be reduced, but maintained at current levels.

Part B above addresses increased chinook and coho production by enhancing certain components of the fishery. In particular, the need to increase escapements of native Alaskan chinook and depleted coho stocks.

Structuring a management regime to achieve the above objective is governed by certain criteria.

1) Significant reallocation of harvests between user groups (sport, purse seine, gill net, set net, subsistence, hand troll and power troll) should be avoided.

2) Some management strategies could lead to major disruptions of established social and economic structures.

3) The Board of Fisheries policy toward mixed stock fisheries is:

   a) In the case of long standing, historical fisheries which operate to a large degree on mixed stocks and for which it is not feasible for participating fishermen to relocate in more inshore fisheries operating on more discrete stocks, such fisheries may be continued provided that the harvest <u>rate</u> and/or fishing effort on stocks passing through such fisheries does not, on the average, increase, and provided that this harvest by these fisheries is not detrimental to the conservation of these stocks.

b) In the case of long standing, historic fisheries which operate to a large degree on mixed stocks but for which fishermen participating in these fisheries can feasibly participate in the harvest of these same and other stocks in more inshore fisheries operating to a greater degree in discrete stocks, preference shall be given to the fishery that serves the public's best interests.

4) The existing CFEC power troll limited entry system is well established and investigation of a hand troll system has begun.

5) International negotiations with Canada are still underway and Washington State Indian treaty entitled allocations have significant implications.

6) The seven National Standards of the FCMA are:

1. prevent overfishing and achieve OY
2. use best scientific information available
3. manage stocks throughout their range
4. allocate fairly
5. promote efficiency
6. allow for variations in fishery
7. minimize costs

MANAGEMENT RECOMMENDATIONS AND CONSIDERATIONS

INTRODUCTION

The existing management policies and regulations currently used by the Board of Fisheries and the National Pacific Fisheries Management Council (and NMFS) provide necessary flexibility to meet in-season abundance variations. Some of the important regulations briefly outlined below provide the framework for meshing the existing policies of management for net, troll and recreational fisheries in Southeast Alaska.

In addition to present regulations covering the coastal and offshore troll fishery, more restrictive recommendations are made to enhance the conservation of chinook and coho stocks in Southeast Alaska and stabilize the interception of non-Alaskan chinook at present levels. These recommended changes in existing regulations are also discussed and will require complementary action by both the Board of Fisheries and the NPFMC.

EXISTING REGULATIONS

1. Numerous terminal area net, sport and commercial troll closures are designed to protect runs of mature Alaska chinook entering their spawning rivers.

2. At current effort levels, the existing sport fishing structure (gear type, bag limits, etc.) is adequate to protect the chinook and coho resource unless poor runs occur.

3. The troll closures in portions of districts 6 and 11 (Juneau) are designed to protect areas of large concentrations of sublegal chinook.

4. The four-line limit for State waters helps control the expansion of effort.

5. The historic chinook season (April 15 - October 31) for waters west of the surfline (defined by 5 AAC 33.310 (B)(4)) conforms with the interest to maintain the current levels of chinook harvest.

6. The coho season (June 15 - September 20) has a delayed opening to allow for the rapid growth of this species which occurs in the spring of their last year of life.

7. The 28-inch size limit for commercial troll and sport caught chinook salmon discourages effort in areas where concentrations of immature chinook exist and promotes the harvest of chinook salmon after a significant portion of their growth potential has been realized.

8. The new 8-day fishing period in a portion of northern Southeast Alaska was designed to decrease the troll gear harvest on coho. Modifications

in the open time periods and areas of application may be necessary after the evaluation of its effectiveness.

9. The 8-day fishing period for hand troll gear in district 1 (Ketchikan) is intended to stabilize hand troll effort until tagging studies to determine the condition of wild coho stocks in the area are completed.

10. The in-season adjustment of time and area openings and closures (i. e., emergency/field orders) are a necessary aspect of effective salmon management.

11. The State ban on hand trolling beyond the surfline controls the expansion of effort in coastal and offshore waters.

FUTURE DIRECTION FOR SOUTHEAST ALASKA CHINOOK AND COHO SALMON MANAGEMENT

The information available at this time suggests that the troll fishery in Southeast Alaska has become efficient to a level that, under current regulations, will allow it to harvest a high percentage of the coho stocks on an annual basis. At this time, high harvests of coho salmon are evidenced by tagging studies on some major producing systems in northern Southeast Alaska, declining production from inside water fisheries and general observations of declining escapements at various locations throughout the region. The information for Alaskan chinook salmon stocks is limited, but their depressed status is well documented and wild stock tagging studies on the Stikine and Taku rivers will provide information on harvest rates and distribution in the fisheries for these stocks over the next few seasons.

Obviously, additional research on chinook and coho salmon stocks in Southeast Alaska is necessary to provide a more complete picture of stock status and the effects of the existing fisheries on these stocks. Although additional coho tagging studies to determine harvest rates and migration routes, observer programs and high seas tagging of chinook to determine availability and distribution from year to year have been proposed, this information does not solve the immediate problem. Unless effort in the troll fishery can be stabilized and possibly reduced to some degree, inside water fisheries will have a decreasing number of salmon available to them over time, and harvest rates will remain dangerously high or even increase from present levels.

In order to avoid placing Southeast Alaska's chinook and coho salmon stocks in ever increasing jeopardy from increases in troll fishery effort and efficiency two measures should be taken without waiting for further research, 1) hand trolling effort must be stabilized through the establishment of an effective limited entry program and, if necessary, regulations and, 2) power troll effort in outer coastal waters must be stabilized and reduced to some degree to offset efficiency increases by this fleet. The degree of difficulty encountered in stabilizing the handtroll effort will be directly related to the number of gear units established by a limited entry program and the efficiency that this gear can develop over time. Limiting power troll effort offshore provides a problem of great difficulty as a clear approach to its solution is not available. The proposed regulations for the 1980 season should be viewed as interim measures that may have to undergo revision once their effectiveness is determined.

The extreme mixed stock nature of chinook and coho salmon stocks in offshore waters suggests that overall effort control and not stock management be the approach used to prevent overharvest of Southeast Alaska coho stocks. The proper information needed to establish an effort control program is lacking at this time. Although it is generally recognized that a number of factors have combined to make the power troll fleet more effective, no quantitative information exists in a usable form. Obviously, if an effort control program based on the fleet capacity and performance is to be designed, a data base on the fleet itself will be necessary. Programs to establish the following data base should be implemented as soon as possible:

1. The port sampling program should be strengthened such that the following information can be collected in addition to tag recovery work:
   a. A yearly profile of the fleet itself should be maintained so that changes that contribute to harvesting efficiency can be documented. This information would include vessel size, number of lines used, crew size and processing or extended holding capacity.

   b. Through interviews, an extensive (as practical) data base on catch-per-day-fished for all areas should be established. This information exists in part for the 1977, 1978 and 1979 seasons. If catch-per-day-fished information can be established it may prove indicative of run size and may serve as a tool to monitor catches in conjunction with any numerical limitation on the fishery to be managed.

c. One of the greatest variables in the outer coastal troll fishery is the behavior of the chinook and coho stocks themselves from season to season. A better in-season understanding of this variable is necessary in order to insure that any in-season management decisions are made with the benefit of an understanding of current conditions in the fishery. At least two persons working with the port samplers to maintain close contact with the fleet would be necessary to gather this information.

If effort offshore can effectively be managed through control of the number of vessel days expended in the fishery, this method may provide a better basis for troll fishery management than time and area restrictions, which tend to shift effort, and are difficult to evaluate for effectiveness.

REGULATORY RECOMMENDATIONS FOR THE 1980 SEASON

1. Only power troll gear should be fished in waters west of the coastal fishing zone (as defined by 5 AAC 33.312(a)(4)). Alaska State regulations presently prohibit the use of hand troll gear in the Seaward biological Influence Zone (as defined by 5 AAC 33.312(a)(5), and Federal regulations should follow suit.

Effective fishery management has historically relied on distinctions between gear types. Such plans have consistently been approved by the State and Federal courts and the U. S. Supreme Court where the distinctions drawn have a reasonable basis and have not been applied arbitrarily.

In managing the Southeast salmon resource the State of Alaska recognizes power troll and hand troll as two distinct gear types and treats them differently. This is demonstrated by State regulations that:

(a) limit entry into the power troll fishery but not into the hand troll fishery;

(b) define power gurdy troll gear separate and distinct from hand troll gear;

(c) recognize that hand troll gear includes not only hand cranked gurdies, but also the use of sport rods and reels to harvest salmon commercially;

(d) provide separate time and area restrictions by gear type including a total ban for hand trolling along the coast of Alaska south of 56°04'45" n. latitude (one mile south of Cape Ommaney) and north of the latitude of Red Fish Cape and 43 percent less fishing time in all of Southeast Alaska regulatory districts 1, 14 and portions of districts 11, 12 and 15.

(e) prohibit hand trollers from possessing salmon or halibut while taking other species with mechanical jigging machines.

Distinct and differential treatment between these two user groups is, and will, continue to be a significant aspect of managing the resource.

Policies adopted by the Board of Fisheries concerning hand troll gear were designed to control expansion of the exploitation of chinook and coho salmon by that gear. Restrictions placed on the gear as a result of those policy decisions were applied only where significant growth in terms of numbers of vessels had occurred or where there was already other gear types present in numbers so abundant as to be able to fully harvest the available resource. In several instances, as a result of Board policy, hand troll gear was awarded special consideration and areas that had previously been closed were opened. The Board reviewed all information available in making these decisions. The recognized differences in socioeconomic characteristics, the potential for rapid increase in numbers, the improving gear efficiency, and the biologically detrimental results of no action prompted the Board's action. Hand troll gear continues to support those dependent upon that fishing gear type at historic levels. Lack of time or area restrictions on hand troll gear for those areas not effected by the Board's action continues to allow for substantial harvest of chinook and coho.

Difference Between the Two Gear Types

Hand trollers and power trollers are two distinct groups of fishermen. The criterion in the State's regulation to differentiate these groups is the method to retrieve the lines: hand power (or hand powered crank including rod and reel) vs. electrical, hydraulic, mechanical or other. A detailed analysis of each fleet's effort -- expressed by criteria such as vessel characteristics (seaworthiness, hold capacity, range, electronics, etc.), number of lines and leaders, retrieval mechanism (indicating fishable depths, retrieval speed, etc.), and crew experience - would show that a "typical" hand troller is significantly different from a typical power troller.

It is emphasized that hand trolling is allowed throughout many of the inside districts in Southeast Alaska.

Impact of Hand Trolling in the FCZ

Hand trolling was allowed by the Secretary of commerce in the FCA during the 1979 season.

Continuation of this policy will have the following consequences:

A. It will obstruct the State's efforts to control expansion of the troll fishery.

B. Present West Coast U.S. - Canada salmon negotiations are proceeding on the understanding that neither country will allow significant expansion of the intercepting fisheries. The efforts of Alaska to limit the potential expansion of hand troll effort in its coastal and offshore intercepting fishery have been favorably received by representatives of all negotiating parties involved.

C. The prohibition of hand trolling in State coastal waters and the acceptance of hand trolling in the FCZ creates a difficult enforcement situation for the U.S. Coast Guard, NMFS, and the Alaska Department of Public Safety.

D. Prior to the closure of the State's coastal waters to hand trolling in 1978, little hand troll effort took place offshore due to the nature of the boats and retrieval mechanism used by the hand troll fishery. Small craft, many equipped with sport rods, could not effectively fish the exposed coasts of Southeast Alaska. The small number of operators that did occasionally fish offshore caught an insignificant portion of the

total troll fishery harvest. However, limited entry on power trolling and the current high price paid for chinook and coho salmon has stimulated the development of a "professional" hand troll fleet which fishes full-time in State waters. Large boats equipped with hand gurdies are capable of participating in the FCZ fishery. A major increase in offshore troll effort on mixed stocks of chinook and coho salmon is expected if hand trolling is not banned. This effort increase could have the following social and biological impacts:

The chinook salmon resource in the FCZ includes stocks of fish from Oregon, Washington, Canadian and Alaska river systems. Many wild stocks of chinook salmon from the west coast, including Alaska, are depleted. The states of Alaska, Washington and Oregon and the Pacific Fishery Management Council have adopted regulations designed to protect and rebuild chinook salmon runs. To allow increased troll fishing effort on the mixed stocks of chinook off Alaska would directly negate these actions as depressed stocks would be subject to even greater fishing pressure.

Mark and recapture studies of wild stocks in northern Southeast Alaska have established that some coho salmon stocks are being harvested at the 80 to 95 percent level (Appendix B). The major portion of this harvest is taken by troll fishing. Conservation measures will be frustrated if hand trolling effort continues on the mixed stocks offshore. Methods must be found to reduce and stabilize (not increase) troll fishing effort. A harvest level exceeding 80 percent is considered much too high to insure maintenance of a wild stock. A harvest level of 60 to 70 percent is more rational and the State of Alaska is attempting to reduce the harvest rates to this level.

In order to protect and rebuild depleted chinook salmon stocks and to reduce the high harvest rate on coho salmon, the State of Alaska has developed a complex regulatory regime for all inshore salmon fisheries. Drift gillnetting, seining, sport fishing and commercial trolling in the inside waters have all been markedly affected. Each change in the fishing pattern of an Alaska salmon fishing fleet necessitated by new restrictions has secondary impacts on numerous rural communities. The Alaska Board of Fisheries tries to minimize these secondary impacts, but to allow further increases of trolling effort offshore will only speed the closure of more inside areas and could force a major disruption of existing fisheries and the communities which they support.

E. A final consequence of the Secretary continuing the policy toward permitting hand trolling in the FCZ would be the necessity for an alternative technique to limit hand trolling such as:

a) A Federal limited entry system which would only grant access to hand trollers who could document having fished in the FCZ during a given base time period; or

b) A system to limit effort (e.g., restrict the number of vessel days); or

c) Rely on the State to prohibit hand trolling in the "adjacent biological influence zone" (i.e., the FCZ) as was done in 1979.

Hand trolling has been treated as a separate entity in Alaska since 1973 and meets the test of a different gear type. Hand troll gear has not been significantly utilized in offshore areas and to assure conservation of the salmon resources, the State has prohibited this gear in its coastal zone (0-3 N miles

offshore). A necessary element contributing to the success of this management program is the prohibition of hand trolling in the FCZ.

2. In waters bounded by a line projected west of Cape Spencer at 58°13'20" N., 136°39'00" W., to a point at 58°12'30" n., 137°08'30" W., thence to a point at 59°21'00" N., 139°47'30" W., then east to the mouth of the Dangerous River at 59°31'00" N., 139°19'00" W., the troll season should be from April 15 through June 30 except that coho salmon should be taken from June 15 through June 30. This proposes to close the coastal zone north of Spencer and south of Yakutat to all salmon fishing after June 30.

Closure of this area to trolling is recommended for conservation of coho and immature chinook.

With current information and management techniques it is difficult to directly monitor the effect of the outside troll fishery on coho since it is the first fishery to intercept these fish. This fishery was acceptable in the past, when enough fish escaped the outside fishery to provide allotments for inside fisheries and stream escapements. Because of the intensity of recent fishing pressure, the Board has dramatically increased conservation measures for the inside fisheries in an attempt to provide for stream escapement and maintenance of net fisheries directed on pinks and chums. (The need to provide an incidental harvest of coho in these net fisheries was identified in the "Problem Statement"). This is demonstrated by: area closures, 8 on /6 off fishing periods, no sport fishing from commercial vessels, etc. However, these measures have not been sufficient. Further, the outside area was closed to hand trolling to prevent

an increase in effort there by this user group. But, restrictions on the inside (e. g., 8 on / 6 off) have motivated a redistribution of some power troll effort to the coastal zone.

Recent tagging studies (Appendix B) have shown that the coastal area north of Cape Spencer serves as a migratory route for coho destined for Southeast Alaska streams. Further, harvest rates on these stocks have been excessively high.

In other words, it is necessary to allow these coho to enter inside waters where their harvest can be more effectively monitored and managed.

The present coho season for troll gear begins June 15. Initial catches in the outside area are small and begin to increase in July with peak harvests occurring in mid-August. The weights of indivicual coho early in the season are small and increase as the season progresses. The proposed closure would prevent any significant harvest of coho in the area north of Cape Spencer and, in turn, make these native coho available for an inside harvest at a larger size.

Coupled with the high harvest of coho in this area is the high incidence of immature, sublegal chinook particularly after July 1. The 1978 troll observer program (NPFMC leaflet #6, p. 12) reports that:

> "The highest incidence of undersized fish occurred on observer trips to on-shore fishing districts adjacent to, or north of, Icy Straits (statistical areas 116-05, 181-05 and 114-21). The average incidence of undersized chinook for trips in these areas was 1.57 for each legal fish caught. For the other areas fished (statistical areas 104, 113, 116-25, 154, and

181-25) the incidence of undersized fish averaged 0.24 undersized chinook for each legal chinook caught."

A statistical analysis of the 1978 harvest tickets shows that the daily average weight of chinook salmon caught in areas 181 and 116 was significantly smaller than fish caught in areas 113 and 104 to the south (Appendix K).

Fishermen concentrate in this coastal area beginning in July to harvest the large availability of coho and thereby also harvest a large number of shaker chinook. It can be argued that if the coho were not available the fishermen would look elsewhere for chinook of a larger size. By closing the area to fishing, not only will the coho be allowed to enter the inside waters, but the pressure on shaker chinook will be reduced.

3. In waters bounded by a line projected west from the mouth of the Dangerous River at 59°21'00' N., 139°19'00" W. to a point at 59°21'00" N., 139°47'30" W., then to a point at 59°43'00" N., 141°08'30" W., then east to Sitkagi Bluffs at 59°43'00" N., 140°39'00" W., the following regulations should be in effect:

   A. The season for troll gear should be from April 15 through September 20, except that coho salmon may be taken from June 15 through September 20.

   B. From the first Monday in July through September 20 the weekly fishing period for troll gear should be from 12:01 p.m. Monday through 12:00 noon Friday.

This proposal closes the general fishing season on September 20 and restricts the weekly fishing period to four days in the area outside Yakutat Bay after the first Monday in July.

Coho salmon taken in Yakutat Bay, and along the coast immediately outside the Bay, are stocks bound for Yakutat District streams. A local troll fleet has developed a dependency on a portion of the harvest from these streams, but set gill net fisheries located in river mouths in the Yakutat District have historically harvested and continue to harvest the majority of these fish.

A weekly fishing period for troll gear inside Yakutat Bay has stabilized troll effort in recent years, but additional troll effort is increasing outside the bay and allocation problems between trollers and gillnetters will soon develop unless trolling is restricted from expanding. Extending the existing fishing period to waters immediately outside of Yakutat Bay is intended to check effort increases on Yakutat District coho stocks and still allow the established troll and net fisheries to continue. Further, troll effort on chinook should not be increased because 1) local stocks of Yakutat chinook are depleted, and 2) fish that migrate through, and feed along, the coast from Dry Bay to Cape Spencer are usually small.

4. The maximum number of lines fished from a troll vessel should be four lines.

5. The maximum number of power gurdies allowed on a power troller should be four.

Legal power troll and hand troll gear is defined by 5 AAC 39.105 (d)(7) and (8).

The four line limit has been existant in waters of State jurisdiction for

several years. The regulation is intended to control the effort on the resource.

The four line limit is also more efficient in terms of reducing shaker mortality. When more than four lines are fished there is the potential for additional mortalities to shakers, through drowning, as the lines take longer to work.

A four line limit in Council waters would be valid for the above reasons, plus being compatible with the State for purposes of enforcement. The corresponding limit on power gurdies (4) is intended to promote ease in enforcement of the four line limit regulation.

6. No salmon should be mutilated or otherwise disfigured in any manner which prevents determining the legal minimum size requirement or the species of the fish.

   There are indications that a market may exist for salmon fillets. This regulation is intended to prevent butchering of salmon on the fishing grounds which would make it impossible to enforce size limits.

7. No troll vessel should fish for salmon in an area closed to coho salmon fishing if the vessel has coho salmon aboard.

   After the close of the coho troll season, commercial trolling boats may continue to fish for other salmon species, making it difficult to enforce the closing of the coho season. This is especially true for freezer boats and trip boats, where it would be impossible to tell when a fish was landed if held on board. This regulation would enhance enforcement of the coho season closure.

The proposed regulatory recommendations for the 1980 season are considered minimal in light of depressed chinook stock abundance and known high coho harvest rates. It should be recognized that this program is amendable as new resource and fishery performance data become available.

REGULATORY OPTIONS CONSIDERED FOR THE 1980 SEASON

During formulation of the 1980 management recommendations for this program consideration was given to various "options" that might be implemented to alleviate resource and management problems identified in the Problem Statement. Management options considered but rejected for the 1980 season were as follows:

Coastal Closures South of Cape Spencer

Closures south of Cape Spencer were rejected on the basis that:

1. Even though harvest rate studies have indicated that coastal harvest rates in excess of 80 % have been indicated for certain northern Southeast stream systems, (see Appendix B, Chinook and Coho Resource Considerations) coho stock compositions, migrations and harvest rate information for southern Southeast systems is inadequate for the formulation of meaningful regulations at this time. Information from studies currently in progress should become available starting in late 1980.

2. There does not appear to be a problem with immature chinook salmon of the same magnitude as that north of Cape Spencer.

3. It is uncertain what impacts closures south of Cape Spencer, in addition to those north of Cape Spencer, would have on coastal communities and buying stations.

Temporal Closures

1. Recent action by the Alaska Board of Fisheries resulted in eight-day-on, six-day-off commercial fishing periods for much of the "inside" waters of Southeast Alaska (Alaska Commercial Finfish Regulations 1979). The effects of these closures on the harvest rates of coho salmon, for which they were intended to benefit, will not be known until the returns for several seasons have been analyzed; similar restrictions, were they to be implemented on a coastal basis, would not address the immature chinook salmon ("shaker") problem along the coast, especially north of Cape Spencer.

In waters where migrating cohos are passing through heavy concentrations of troll gear, temporal closures are probably the best way to limit catches without totally closing the fishery. In outside waters where longer trips are made and buying stations are more distant from fishing areas, this type of regulation would not serve to protect concentrations of immature chinook that are feeding and not migrating.

2. A winter closure inside the surfline was also considered as being beneficial to chinook salmon conservation in terms of the savings in potential native Southeast Alaska spawners. Such restriction, however, was considered excessive in light of the limited knowledge available in relation to native chinook escapements and the new fishing periods imposed by the Board of Fisheries.

3. Daylight only drift gill net openings may reduce incidental catches of immature chinook salmon. The use of night closures to reduce the incidental catch of small chinooks was successfully attempted in the district 6 gill net fishery in 1978 on an Emergency Order basis. The further

use of this type of regulation may be warranted in instances where above-average incidental chinook or coho catches occur.

Total "Outside" Trolling Closure; Relaxation of "Inside" Closures

This option was rejected for the following reasons:

1. The troll fleet would be denied the opportunity to harvest much of the non-Alaskan stocks of chinook salmon that have, historically, provided the bulk of the Alaskan chinook troll catch.

2. Coastal communities and buying stations, dependent on the troll fleet for their livelihood, would be severely impacted.

Gear Restrictions for Trollers

In order for an individual unit of troll gear to maintain the potential for effective harvesting of salmon, no regulations other than the current four line limit should be imposed.

ENFORCEMENT RECOMMENDATIONS

PUBLIC AWARENESS

Regulations adopted by the Board of Fisheries and NPFMC/NMFS should receive a greater degree of media exposure. The public cannot be expected to comply with new regulations if they do not know the changes. Part of the responsibility for the lack of knowledge about new regulations must fall to the various

agencies that promulgate these regulations. However, the primary responsibility for learning of regulatory changes must fall on the fishermen themselves. The lack of regulatory changes throughout most of the history of the troll fishery has promoted an attitude of complacency among trollers and some of them fish for the whole season without being aware of regulation changes.

INCREASED ENFORCEMENT EMPHASIS AND CAPABILITY

Presently the amount of time spent enforcing the regulations in the troll fishery by both the Department of Public Safety and National Marine Fisheries Service is not adequate to insure compliance. The staff of both enforcement agencies are often poorly equipped and undermanned and duties related to other fisheries enforcement have required that minimum time be spent on troll regulation enforcement.

As the necessity for troll restrictions increase, greater enforcement emphasis will be required to insure an orderly harvest and compliance with regulatory changes.

RESEARCH RECOMMENDATIONS

Effective management of the chinook and coho resources of Southeast Alaska requires expanded fisheries research.

Of greatest significance are micro-wire tag related projects because the major portion of the chinook and coho are harvested from mixed stocks. Analysis of data from the marking and recovery of native and hatchery stocks from Alaska and the other Pacific Coast states supplies the basis for stock definition - stock origin, time and area distribution of stocks, migration routes and harvest rates.

Since decreased harvests and escapements indicate critically low levels of native Alaskan chinook current tagging programs for these stocks need to be expanded and new programs should be started for the remaining major river systems in Southeast Alaska.

Results from marking stocks of coho from northern Southeast Alaska systems indicate excessive harvest rates. Coho tagging projects must be expanded throughout Southeast, particularly to the outer coasts of Baranof and Chichagof Islands, lower Chatham Strait, the west coast of Prince of Wales Island and the "inside" streams of southern Southeast. Further, marking studies should be periodically repeated to evaluate the effectiveness of management strategies.

The recovery and analysis of micro-wire tags is significant not only in terms of determining harvest rates and distributions of native Alaskan chinook and coho, but also for the determination of the contributions of non-Alaskan stocks and salmon produced from Alaska hatcheries. The effect of hatchery fish on mixed stock fisheries and the success of hatchery facilities will require analysis.

It is essential, therefore, to maintain or increase the current rate of tag recovery. Since it is necessary to expand tagging programs it follows that the effort put into the recovery program for these tags must also expand.

Another topic of research concern are times and areas of suspected high incidence of chinook shakers. Limited troll observer programs and analyses of fish tickets and logbooks are needed to document, and hopefully predict, the occurrence of undersized fish in these selected areas.

Continuing data collection through harvest tickets has shown certain fishing

grounds to be primarily feeding and nursery areas for immature chinook salmon. The coastal banks from Cape Spencer north to Yakutat are, in particular, such an area. More definitive information could be gathered by means of an in-season high seas tag and recovery program. Though costly, such a program would provide information not only on size composition, but also on stock origins, migration and timing of runs, interaction between user groups (gear conflicts) and harvest rates. This information would start to become available the first season that such a program was implemented.

Information is also needed on the potential consequences of alternative management strategies, particularly from a socio-economic perspective. This requires investigation into the processing, harvesting and community sectors as discussed in the Socioeconomic Data: Collection & Analysis For Use In Fishery Management Plans, Council Document #6, Aug. 1979.

Finally, there is a definite need to identify and pursue quantitative evaluations of fishery perfermance data as they relate to possible management strategies for the troll fisheries throughout the range of the chinook and coho resources. Is there a way to truly limit effort? Can seasonal time / area management be used with existing data? What data and criteria should be applied to in-season management? etc.

Beginning November 1, 1979, the NPFMC will fund a one year biometric analysis to investigate the feasibility of using certain fishery data as the basis of time and area management for the Southeast Alaska troll fishery. Additional work of this nature must be conducted.

PRELIMINARY D...
FOR REVIEW/SUBJECT TO ...
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ALASKA's LIMITED ENTRY SYSTEM

The State of Alaska passed limited entry enabling legislation in April of 1973, which established the Commercial Fisheries Entry Commission (CFEC) and charged it with promulgating regulations to limit entry into those fisheries which, in the CFEC's judgment, require limitation. The Southeast power troll salmon fishery was limited by the CFEC in December of 1974. Entry into the Southeast hand troll fishery has not been limited.

Regulations implementing power troll limited entry established the maximum number of permits at 950, although this could be exceeded so as to prevent exclusion of persons who would suffer "significant economic hardship." (See. Appendix 8.3.1.3, December 1, 1979 final draft of the Salmon Plan approved on May 15, 1979 (44 FR 33250, June 8, 1979), for a discussion of how the State system was developed.) As of May 15, 1979, 934 power troll permanent entry permits had been issued. Approximately 40 more applications for such permanent permits were still in adjudication, the applicants for which were allowed to continue fishing under power troll interim-use permits. Thus at the time regulations for the 1979 salmon plan were first implemented, there were about 974 units of power troll gear allowed to fish under Alaska's limited entry system.

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In July of 1979, however, the Alaska Supreme Court handed down a decision which will require CFEC to issue an as yet undetermined number of additional permits. Essestially, the CFEC will have to award a certain number of points to persons who did not hold a gear license, and were thus prevented from applying for an entry permit, but who nevertheless were partners of, and equal in status to, the power troller who held the gear license and was awarded the entry permit. The CFEC is not drafting regulations to implement this decision, but it is too soon to know how many persons will apply for permits, and how many of those applicants will be granted interim-use permits until decisions on their applications are made. The CFEC estimates that the number of additional interim-use and perhaps permanent entry permits may range from as low as 25 to as high as 200, although 50 is suggested as the most realistic estimate.

As states, the CFEC has not implemented limited entry for hand trollers. Whether or not this fishery should continue to remain open to entry has been a hotly debated issue for the last few years. Those who wish the fishery to continue to remain open feel that there should be at least one unlimited salmon fishery to provide a relatively low cost entry opportunity to anyone who wishes to become a fisherman. Those who want the fishery included under the limited entry system cite the tremendous growth in the fishery over recent years and the resulting management problems (See Problem Statement)

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The CFEC is now taking initial steps to limit the hand troll fishery. Studies are being conducted to determine characteristics of fishermen participation. The results of these studies and their applicability to a limited entry system will be the subject of public hearings held this year. Subsequently, regulations establishing a point system will be drafted and presented at a second round of hearings. These regulations, or a modified version, will then be adopted. However, it is unlikely that access to the hand troll fishery will be controlled prior to 1981.

COUNCIL MORATORIUM

The Salmon Plan prepared by the Council now in effect states that limited entry is necessary to maintain present levels of effort and catch in the power troll fishery in the FCZ, that limited entry will promote efficient operation of other management measures, that without limited entry there is a significant probability that persons affected by restrictions in other fisheries will turn to Alaska, and that limited entry is less socially and economically disruptive than alternative management measures designed to restrict trolling in the FCZ. Earlier drafts of the plan proposed a separate limited entry system for the FCZ which would have only granted access to power trollers who could document having fished there in the years 1975-1977. This was rejected, however, partly due to allegations by power trollers that the fish ticket data upon which such a scheme

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would be based was faulty, but primarily due to the recognition by the Council that the power troll fishery was a single fishery and should not be split by the three-mile boundary line. Accordingly, the plan "adopted" Alaska's limited entry system, thus permitting all holders of power troll entry permits to fish in the FCZ. The plan also granted access to persons not holding an Alaska permit but who could document having fished in the FCZ. No one has yet qualified under this last provision.

During preparation of regulations to implement the plan, it became apparent that there was little, if any, guidance in the plan on just how the State system should be "adopted." The most significant problem was expressed by the Assistant Administrator for Fisheries, NMFS, in a letter to the Chairman of the Council explaining approval of the salmon plan:

> In examining the details of the Alaska system, it became apparent that under this system, State officials make certain discretionary judgments that could affect the rights of individuals to fish in the FCZ under the FMP. Some of these discretionary judgments involve revoking existing permits, granting additional permits, determining the optimum number of permits, and transferring permits. The FCMA contemplates that the Secretary is responsible for promulgating and carrying out the regulations for plans. It would be inappropriate under the FCMA if State, regional or local officials, or private parties, were to be given the authority to determine the rights of individuals in the FCZ. Accordingly, we have implemented the limited entry system in a manner which is consistent with the

intent of the Council, by allowing those persons holding State permits to fish in the FCZ in 1979. The many difficulties associated with developing a unified Federal-State limited entry system, however, should be addressed before that system is extended beyond 1979.

As further explained in the preamble to the proposed regulations (44 FR 29080, May 18, 1979), the plan's "adoption" of the State system was implemented as a one year moratorium on issuance of commercial power troll permits for the FCZ. Only those persons who held a State power troll permanent entry or interim-use permit on May 15, 1979 were allowed to fish in the FCZ in 1979, which, as discussed above, was approximately 974 persons.

The regulations implementing this moratorium provided that the Regional Director could override a decision by the CFEC which affected an individual's right to fish in the FCZ. For example, if the CFEC denied transfer of a State entry permit, which effectively would also deny transfer of the FCZ authorization, the parties involved could apply to the Regional Director to have that FCZ authorization transferred. Although the Regional Director would make his decision based on the same criteria as the State decision, it is possible that he could approve such a transfer, which would effect a severance of the FCZ authorization from the State permit. If this happened, the State permit holder could no

longer fish in the FCZ and the Federal permit holder could not fish in State waters. Unfortunately, a severance as described would have a result contrary to the management objectives of the salmon plan in that where there formerly was only one unit of gear, there would, after a severance, be two units of gear, although each would be restricted to a separate area. In addition, that a separate FCZ-only authorization or permit would result from a severance, and possibly in other situations as well -- override a State denial of an emergency transfer, revocation of a State permit, and more -- raises serious enforcement problems in determining which permit holder is allowed to fish where.

ALTERNATIVES FOR THE FCZ FOR 1980

Power Troll Fishery

Four alternatives are identified for limited entry for the FCZ for 1980. These are having no limited entry or moratorium; extending the moratorium now in effect, which means no entry into the FCZ for anyone who obtained a State interim-use or permanent entry permit after May 15, 1979; broadening the current moratorium to include any persons who obtain a State permit after May 15, 1979, mostly as a result of the recent Alaska Supreme Court decision; and establishing the limited entry system proposed last year, which would allow into the FCZ only those power trollers who can document having fished in the FCZ during the base years 1977-1979.

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1. No Limited Entry or Moratorium

This alternative would essentially reopen the FCZ to any power trollers who desired to fish there, including all Alaska entry permit holders as well as other power trollers who don't have Alaska permits but land their catches out of Alaska (e.g., Washington).

Advantages:

- Eliminates all administrative and enforcement problems associated with having a limited entry system in the FCZ.

Disadvantages:

- Does nothing to restrain or control expansion of the power troll fishery in the FCZ; and

- Would probably necessitate rather severe time and area limitations in the FCZ in order to accomplish such restraint or control.

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2. Current Moratorium

This alternative would leave matters as they now exist - the number of units of gear would be limited to the approximately 974 allowed in the FCZ as of May 15, 1979. New interim-use or permanent entry permit holders, that is, who became such after May 15, 1979, would not be allowed to fish in the FCZ. The intent would be to exclude those persons who obtain their permits as a result of the recent Alaska Supreme Court decisions. Of course, transferees of permanent permits which had been issued by May 15, 1979 would not be excluded from the FCZ.

Advantages:

- Prevents the number of units of power troll gear allowed in the FCZ from increasing beyond the approximately 974 units now allowed, which addresses the management goal of restricting increased effort; and

- By controlling effort in that manner would do nothing to worsen current West Coast salmon problems, including treaty entitlements of Washington State tribes.

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Disadvantages:

- Raises problems in administering two types of State permits - those allowed into the FCZ, and those recently issued permits not allowed into the FCZ;

- Creates potential enforcement problems associated with having the two sets of permits; and

- Contemplates almost a "separate" limited entry system in the FCZ.

3. New Moratorium

This alternative would extend the current moratorium but in a revised fashion -- persons who receive a State permanent entry or interim-use permit after May 15, 1979, mostly as a result of the recent court decisions, would be permitted to fish in the FCZ. There would still be a restriction to entry for persons who did not have a State permit.

Advantages:

- Alleviates the enforcement problems associated with allowing some, but not other, State permit holders to fish in the FCZ; and

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- Eases many problems with administering the two sets of permits.

Disadvantages:

- Gives, by the CFEC estimates, anywhere from 25-200, but probably around 50 additional persons the right to fish in the FCZ, which is contrary to the stated goals of the plan; and

- Allows such additional effort at a time when the issue of interception of Canadian and Washington State bound stocks is quite sensitive.

4. Entry Limited to Actual Participants

This alternative is essentially the same as one proposed, but rejected, by the Council last year -- entry into the FCZ would be limited to only those power trollers who could document having fished in the FCZ during the base years 1977-1979. This proposal is raised again primarily as an option to alternative 2 above. If the Council were to retain the current moratorium as that alternative suggests, which necessarily means that the Coucnil would be moving toward a limited entry system that is

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not coextensive with, but in fact separate from, the State's system, then it seems logical to consider a separate system for the FCZ that would be the most effective in holding effort to current levels.

Advantages:

- Provides the most effective and meaningful restriction on increases of effort beyond present levels; and

- As such, accomodates the recognized goals of maintaining present harvest and interception rates but also maintaining, and even increasing, escapement.

Disadvantages:

- Creates the same administrative and enforcement problems with administering two limited entry systems as suggested by alternative 2, only to a much greater degree; and

- Involves many, though not all, of the same data problems thought to be objectionable last year.

The Point Baker Hand Trollers Association has examined the draft of the 1980 troll plan. We present here a review of the plan's text, particularly in its relation to hand trolling, comments on the plan's methodology, and finally, specific recommendations as to changes in text.

INTRODUCTION

The Point Baker Hand Trollers Association believes that the troll fishery should be managed as one fishery. The notion that trollers who are permitted to retrieve their gear with power deserve preferential regulatory treatment over trollers who retrieve their gear by hand was championed by the power troll lobby. The first discriminatory troll regulation, the closure of coastal waters to hand trollers only, was enacted in June, 1978. Never before in the long history of the troll fishery had such regulatory discrimination been made. Prior to June, 1978, regulations on trolling have always been born equally by all trollers, regardless of the manner in which they retrieve the gear. Further troll closures were made in 1979 for certain inside areas and the FCZ, and again power trollers received special exemption. Forcing those trollers who have had the least impact on the resource to accept closures, in the name of conservation, while allowing those trollers who have had the greatest impact on the resourse to fish unrestricted, is plain nonsense and totally baffling to any non-bureaucratic mind.

POWER AND HAND TROLL: SIMILARITIES AND DIFFERENCES

The notion, as stated in the plan, that "hand trollers and power trollers are two groups of fishermen who do not use essentially the same type of gear," is false. The gear is exactly the same, from hook to gaff hook. The only difference is the kind of power used to retrieve the gear, muscle or mechanical. Even the gurdies themselves are often identical, the only difference being either a handcrank or mechanical coupling on the end of the gurdy shaft. Hooks, spoons, plugs, leader, wire line, poles, rigging, blocks, and all the miscellaneous hardware commonly known as troll gear is exactly the same identical gear, regardless of the source of power used to retrieve it. Many former power troll boats are today hand troll boats with the simple addition of a crank to the gurdies. The extreme difficulty of telling one boat from another was demonstrated by this year's new regulation requiring identifying markings on all trollers so that law enforcement personnel could tell the hand trollers from the power trollers. Both hand and power trollers are found fishing side by side, fishing in the same method, following the same strategies, and fishing for the same fish. Distinctions between these two groups of trollers are completely insignificant compared to differences between other gear types such as purse seine, gillnet, longline, trawl, etc., where the actual gear and hardware, fishing methods, strategies, vessel design, and target species are unique to each fishery. To attempt to regulate and allocate among trollers is not the same thing as to

regulate and allocate between, say, seiners and gellnetters. On the other hand, this is not to say that power trolling and hand trolling areequally effective. Although the gear itself is identical, the use of mechanical power allows the gear to be "run" faster, deeper, and more frequently than the average set of muscles generally allows. This can make the use of the same gear much more effective. An analogy may be made to the use of the power block in purse seining, making the use of the same gear(in this case a net)more effective than without a power block. But the seiner who uses a power block does not become a different gear type by virtue of such use.

The arguments presented as justification for treating trollers as two distinct gear types on page 21 of the draft plan are embarrassingly contrived. We respond to them in the order presented:

A. The fact that the Commercial Fisheries Entry Commission chose not to include hand trolling under a limited entry program at the same time as power trolling does not necessarily make it a separate gear type. The CFEC is now, in fact, in the process of including the hand powered portion of the troll fishery under limited entry as well.

B. The definitions used by the state to describe hand trolling and power trolling are only several years old and have been changed a number of times. Still, the line of distinction remains drawn strictly on the type of power used to retrieve the gear, muscle vs. mechanical.

C. Sport rods are rarely used by handtrollers, but being hand powered, remain legal. They can also be used by power trollers, though rarely are. They form no basis of distinction between commercial trollers.

D. The fact that recent regulations have been made which, in their application, discriminate between trollers, does not make the two groups essentially different gear types. Laws that prohibited persons with black skin from sitting in the front of the bus did not make them essentially different types of persons, in spite of what was claimed at the time by those state law makers who made such distinctions.

E. Regulations of jigging machines are the same for power trollers, hand trollers and non-trollers. No distinction in gear types is made, as implied in the draft plan. The statement that "distinct and differential treatment between these two user groups is and will continue to be a significant aspect of managing the resource," is highly presumptuous. Hand trolling has been conducted in Southeast Alaska for nearly 75 years. Power trolling, as we now call it, has been around some 50 years. Preferential regulatory treatment for power trollers is 18 months old. These recent closures on hand trollers only were primarily adopted to "control expansion of an unrestricted fishery" in lieu of any existing limited entry program. Now, with the advent of limited entry for hand trolling, it can be expected that these interim closures will be re-evaluated. Furthermore, the impact of these closures on the social environment as well as the resource has yet to be examined. Such examination may lead to the discontinuance of differential treat-

ment among trollers, regardless of limited entry. It is unlikely that the Board of Fisheries will wish to remain locked in to an unsuccessful management strategy, as is suggested by the statement in the draft plan.

On page 23 of the draft plan appears the statement, "A detailed analysis of each fleet's effort--expressed by criteria such as vessel characteristics(seaworthiness, hold capacity, range, electronics, etc.) ...should show that a 'typical' hand troller is significantly different from a 'typical' power troller." Saying that the "typical hand troller" is significantly different from the "typical power troller" is no justification for treating trollers as though they were two different gear types, but rather is a crude generalization of the difference in socio-economic status of the two groupings of trollers. Historically, hand trollers have mainly been those trollers not able to afford the cost of powered gurdies. Today, with power troll permits selling in excess of $30,000, the socio-economic distinction between trollers continues. Hand trollers are now those trollers who can not afford $30,000 for the luxury of powered gurdies. Likewise, the "typical hand troller" cannot afford a boat of the size and capability of the "typical power troller." However, these socio-economic differences in no way justify regulatory discrimination against the relatively economically disadvantaged group of trollers. The "typical hand troller," in spite of his sesser capability of effort, should have just as much right of access to the fishing grounds as the "typical power troller." The notion that the right to fish of hand trollers is somehow more expendible than that of a power troller is one hand trollers, as Americans, can not accept. Hand trollers have a right to equal treatment under the law. As has been shown, differential regulatory treatment of trollers derives from distinctions that have no reasonable basis and are largely arbitrary in application.

HAND TROLL CLOSURES, THE FCZ, AND LIMITED ENTRY

As stated before, the Point Baker Hand Trollers Association believes trolling must be regulated as one fishery. Therefore, hand trolling in the FCZ should be allowed on the same basis as power trolling. Beginning on page 23 of the draft plan, possible consequences of continuation of the present policy are listed, to which the following comments are addressed:

1. Leaving the FCZ open to hand trollers will in no way obstruct the state's efforts to control expansion of the troll fishery, as claimed in the draft plan. All the traditional management tools(limitation of vessel days, quotas, gear restriction, etc.)will remain as options for controlling effort in the troll fishery. Closing the area to hand trollers only merely deprives a small number of people of a portion of their traditional livelihood, forcing their efforts into the more biologically sensitive inside areas. Their impact on the FCZ fishery, as pointed out in the draft plan, is insignificant. As the state is now including the hand powered portion of the troll fishery under limited entry, reducing the fleet to near 1975 levels, the potential for unrestricted growth in this portion of of the fishery is no longer possible. Furthermore, federal

limited entry for hand trollers in the FCZ remains a viable option.

2. Significant expansion of the power troll effort, in the past five years, has occurred in the FCZ, while hand troll effort has remained insignificant in the FCZ, as is stated in the draft plan. Allowing this admittedly insignificant participation to continue in the FCZ, in the face of the expanding power troll effort in the FCZ, should therefore have no effect on West Coast U.S.-Canada negotiations in regard to the issue of not allowing significant expansion of the intercepting fisheries. The statement in the draft plan that "The efforts of Alaska to limit the potential expansion of the hand troll effort in its coastal and offshore intercepting fishery have been favorably received by representatives of all parties involved," is insulting to hand trollers, as they are the only party directly affected, and very detrimentally, and whose opinion was never even considered.
3. The "difficult enforcement sityation" that now exists will be eliminated when trollers are treated equally under the law. Specifically, these enforcement difficulties offshore will be eliminated when the recent ban on hand trollers in coastal waters is eliminated. With the advent of limited entry for hand trolling, the future of this and other discriminatory closures is in doubt. in Appendix F, "Power Troll--Hand Troll Interactions," it is stated that "present regulations concerning power troll-hand troll interactions should be viewed as <u>interim measures</u>. Restrictions on the further expansion of the number of hand troll units and reduction of that number through an acceptable limited entry system should receive priority." The closure, by the Board of Fisheries of the coastal waters to hand trollers was based on the absence of a limited entry program at that time. The CFEC now intends to limit 1980 permits to those who fished in 1978 or earlier, and by 1981 permanently limit permits to near 1975 levels. Therefore, future enforcement problems would likely increase if hand trollers are banned from the FCZ.
4. As stated here in the draft plan "The small number of operators that did occasionally fish offshore caught an insignificant portion of the total troll fishery harvest." There is no evidence to indicate any significant increase in effort by hand trollers in the FCZ. The threat of "a major increase in offshore troll effort...within a few years" if hand trollers are not banned, is prue speculation and is not born out by any statistics. On the other hand, a substantial increase in power troll effort <u>has</u> been documented and it is logical to assume that increased effort in the future will continue to come largely from <u>this</u> group, not from trollers using hand power. To ignore the real source of increased FCZ harvest, namely increased power troll effort, and use the admittedly insignificant harvest by hand trollers as a scapegoat, is disgraceful not only to efforts to save the resource, but on the basis of ordinary fairness.

5. The Point Baker Hand Trollers Association is well aware of the plight of many salmon stocks and encourages whatever limitation on effort that is required to protect and rebuild runs, so long as such restrictions are born equally by all trollers and not exclusively by those who use hand power. To exclude hand trollers from participating in the FCZ while allowing power trollers, also negates National Standards of the FCMA, namely, "to allocate fairly" and "to allow for variations in fishery."
6. Hand trollers should be allowed to fish in the FCZ in the same manner as power trollers have been allowed--currently meaning, under a system of limited entry, be it state or federal. As state limited entry for hand trolling is now being formulated, continuing the current system, for the interim, may be the most practical course. Still, a federal limited entry system would be preferable to denying individuals access to their traditional fishing grounds. In fact, on page 42 of the draft plan it plainly states that "...limited entry is less socially and economically disruptive than alternative management measures designed to restrict trolling in the FCZ."

The draft plan goes on to state that "each change in the fishing pattern of an Alaskan salmon fishing fleet necessitated by new restrictions has secondary impacts on numerous rural communities. The Alaska Board of Fisheries tries to minimize these secondary impacts, but to allow further increases of trolling effort offshore will only speed the closure of more inside areas and could force a major disruption of existing fisheries and the communities which they support." The facts have proven that just the opposite happens. Forcing hand trollers to abandon outside waters has hastened, not minimized, impacts on rural communities. To take one example from the 1979 season, the closure of outside waters to hand trollers had the following impact on our community, Point Baker, located inside Area 6:

1. Local hand trollers who normally rely heavily on outside areas for their livelihood were forced to concentrate efforts on the less profitable and more biologically sensitive inside areas. This resulted in substantial loss of potential personal income and increased pressure on depleted local salmon stocks.
2. This fleet(displaced by the outside closures) plus a large Ketchikan fleet(displaced by Area 1 closures on hand trollers only)plus the usual Point Baker "homeguard" concentrated to create an unusually intense and competitive effort in our area. Boats and litter clogged our harbor. Local fuel and other supplies were exhausted. Local fishermen caught a smaller proportion of an already small catch.
3. Due to the scarcity of fish and unusually high levels of effort, Area 6 was finally closed to trolling altogether.

Forcing hand troll effort from outside to inside waters has negative impacts on individual fishermen, rural communities, and most certainly on the resource.

Closure of the coastal fishing zone to hand trollers was implemented before the CFEC had begun action on limited entry for hand trollers. Not being under limited entry, the increase in the number of hand troll

permits annually issued was given as the primary reason for closures to hand trollers only. Under the CFEC's timetable, a moratorium on new permits will be in effect for the 1980 season, limiting participation to those who fished prior to 1979. By 1981, the number of permits should be permanently reduced to near 1975 levels, the year limited entry was enacted on power trolling. Therefore, entry into the hand troll fishery is no longer unrestricted and the basic premise, on which closures to hand trollers were enacted, is no longer valid. Thus, with the advent of limited entry for hand trolling, the coastal waters as well as the FCZ and other areas should be open or closed to all trollers on an equal basis.

It should also be remembered that the increase in numbers of hand troll permits that occurred during the years 1975-1978 was due primarily to urban recreational fishing and permit speculation, not trollers who customarily fish the outside waters. For example, here in Point Baker, the number of hand troll permits fished in 1975 was 48. In 1978 there were 49. In Juneau in 1975 there were 205 hand troll permits and in 1978, 784 permits were fished(CFEC records). In effect, Point Baker hand trollers, who rely entirely on fishing for a living and have not increased in number, were excluded from their usual outside grounds as a result of an increase in the purchase of permits by predominately urban non-fishermen who do not rely on these waters for a living. In the proposed draft of the plan which preceded this one, one of the policie stated for directing management objectives was to "Stabilize the hand troll portion of the troll harvest with preference to rural and economically dependent trollers." We feel the deletion of this policy from the present draft of the plan is a very serious mistake. Regulations effecting hand trollers have enormous impact on rural communities like Point Baker, far beyond that felt by urban recreationalists. Management policy must be shaped with this greater socio-economic impadt on rural and economically dependent trollers in mind. We would like to see this policy reinstated in the final plan.

METHODOLOGY AND ENVIRONMENTAL IMPACT

The Point Baker Hand Trollers Association agrees with Sea Grant Advisory Specialist, Zach Lea, when he wrote in an article in the 1977 Yearbook Issue of National Fisherman, entitled "Successful Fisheries Management Needs 'People Input,'" that "...too much of current fishery management science is aimed at finding the best allocation package for a resource rather than showing the effects of alternative packages on the resource and the people using it. Scientists are going too far beyond their proper bounds when they dictate the best solution to resource allocation problems." These words should be kept in mind when drafting a troll plan, particularly in regard to hand trolling. Clearly, eliminating trollers who use hand power from their accustomed fishing grounds will have effects on these users of the resource. In the 230+ pages of this draft plan, no study or even mention of such effects is made. In fact, no impacts on the social environment at any level have really been examined in this draft plan. The only alternative management packages presented in the draft plan are in relation to limited entry for power trollers in the FCZ, and here the stated advantages and disadvantages of the various alternatives relate only to the relative ease

of administration and enforcement rather than social impacts or resource impact. In relation to hand trollers, no alternatives are presented and no studies of social impacts have been considered.

Although at the bottom of the list of research recommendations mention in the draft plan is made that"Information is also needed on the potential consequences of alternative management strategies, particularly from a socio-economic perspective," it would seem that such information is absolutely prerequisite to the drafting of any plan that has such broad and drastic social effects. Anthropologists and sociologists are certainly needed to provide the social science research to put the already extensive biological science research into the proper perspective to form sound management policy. Particularly with regard to the dependence on hand trolling in rural Alaska, many questions need to be asked which go beyond the realm of the biological sciences. For example, what is the actual monetary cost to individual communities of hand troll closures? What is the cultural cost, particularly in Native communities? How does hand troll catch relate to public assistance roles, food stamp requests, unemployment, and other costs to society? What are the cultural costs to our society when "the big guys squeeze out the little guys," when small independent businessmen must leave their home communities to become wage earners or become welfare recipients? We wonder if fishery managers realize the gravity their decisions have on the lives of many rural Alaskans. There is nothing in this draft plan to indicate so.

Clearly, the loss of our salmon resource would have the most far reaching social impact of all. The Point Baker Hand Trollers Association is totally supportive of all meaningful regulations and laws to conserve the resource. All we ask for is equal treatment under such laws. Regulations to limit troll effort must be applied equally to all trollers.

SPECIFIC RECOMMENDATIONS FOR TEXT REVISION

Pages 20-26

Eliminate Regulatory Recommendation 1 and associated discussion. Substitute:

1. The troll fishery shall be regulated as one fishery. Existing regulations which apply only to the hand troll portion of the fishery shall be eliminated. This will:
    1. Provide equal treatment under the law. Trollers use the same type of gear regardless of whether it is retrieved manually or mechanically. To regulate differently is to give preferential treatment under the law to one group, where the distinction between groups is largely arbitrary and has no reasonable basis.
    2. Provide for fair allocation. The National Standards of the FCMA require management "to allocate fairly." Regulating trollers equally will ensure that conservation measures are born equally by all trollers, rather than effectively allocating fish to one group exclusively.
    3. Allow for variantions in fishery. The National

Standards of the FCMA require management "to allow for variations is fishery." Eliminating only hand or power trollers from an area would not be allowing for variantions in fishery.

4. Simplify management. Developing one set of regulations for the troll fishery instead of two inter-dependent and often conflicting sets of regulations will greatly simplify management.
5. Simplify enforcement. Conflicting and controversial regulation will be eliminated. The same rules will apply to all trollers. The need for identification of vessels as to gear retrieval method will be eliminated.
6. Minimize costs. Simplification of enforcement and management will minimize costs, one of the requirements of the National Standards of the FCMA.
7. Prevent disruption of established social, economic, and family structures. Regulation aimed exclusively at hand trollers has far reaching social impact, particularly in rural Alaska, where dependency on this mode of trolling is often total. Depriving individuals significant portions of their income when their income is already relatively meager and when no alternatives for income are available will be avoided. Dislocation of heads of family to find work unavailable at home will be avoided. The continuation of small-time capitalism will be allowed; the continuation of cultural values associalted with fishing will be allowed.
8. Provide for conservation. The application of all management tools will continue to be possible. The options of quota, vessel day limitation, area closures, etc., will remain viable. However, all trollers will be equally effected by any such limitation: not just one class of trollers.
9. Be consistent with historical regualtion of the troll fishery. In the 75 year history of Alaska trolling, no regulatory preference has ever been given to trollers who use power to retrieve their gear over trollers who use their muscles, the past 18 months excepted.
10. Recognize the fact that hand trolling is no longer an "open fishery." The recent hand troll closures were based on the fact that hand trolling was unrestricted in potential growth because it was not yet included under limited entry. This is no longer the situation. The CFEC intends to have a moratorium in effect for the 1980 season, limiting entry to those who fished prior to 1979, and by the 1981 season, to have permanently reduced the number of permits to near 1975 levels, the year limited entry was applied to power trolling.

Page 10, Paragraph 2:
Line 6: Change "efficient" to "effective."
Line 7: Sentence beginning "However..," change to: Hand troll vessels usually operate at less expense than power troll vessels and, because of lesser vessel capabilities, less need to recapture capital investments in permits and large vessels, or closure of more profitable areas to hand trolling, may fish in areas that power trollers cannot profitably fish.
(This more realistically describes the actual situation.)
Line 9: Delete the word "further."
Line 11: Delete the word "therefore."

Page 13, Item 2: Change to: Management strategies that lead to disruptions of established social and economic structures are undesirable.
(In keeping with the previous draft.)

Page 14, Item 4: Change to: The existing CFEC power troll limited entry system is well established and stabilization of the hand troll portion of the troll harvest has begun by CFEC, with preference to rural and economically dependent trollers.
(In keeping with previous draft.)

Page 18, Line 5: Delete: "And, if necessary, regulations."
(An effective program is one which precludes need for separate regulation. Redundant.)

Submitted by:
Tom Jacobson, hand troller
Point Baker Hand Trollers Association

October 17, 1979.

IN THE BOARD'S CONSIDERATION OF THE HAND TROLL FISHERY, WE, REPRESENTING THE PROFESSIONAL HANDTROLLERS FROM COMMUNITIES THROUGHOUT SOUTHEAST ALASKA, REQUEST THE BOARD TO GIVE PRIME CONSIDERATION TO OUR ECONOMIC DEPENDENCE ON HANDTROLLING, SUCH AS RESIDENCE IN A TOWN OF A SIZE WITH LITTLE OR NO ALTERNATIVE OPPORTUNITIES FOR INCOME, AND PER CENT OF INCOME DERIVED FROM HAND TROLLING. WE ALSO ASK THAT YOU CONSIDER SUCH MANAGEMENT AS WILL PROVIDE FOR A CONTINUING, VIABLE, COMMERCIAL FISHERY, OPEN TO ENTRY BY OUR CHILDREN, WITH SOME SYSTEM OF NON-MONETARY TRANSFER OF PERMITS.

WE WILL NOT SUPPORT REGULATION WHICH SPECIFICALLY DISCRIMINATES AGAINST HANDTROLLERS AS OPPOSED TO POWERTROLLERS.

ANGOON: CHARLIE JIM, SR.
DENNIS EAMES
ANDREA EAMES

CRAIG: ROBERT FULTON

HOONAH: ARCHIE BROWN, SR.
ALBERT DICK

PORT ALEXANDER: JOHN BADER

POINT BAKER: TOM JACOBSON

PORT PROTECTION: HOWARD PENDELL

SITKA: ALFRED PERKINS

YAKUTAT: BOB ANDERSON
HANK PORTER

TLINGET-HAIDA CENTRAL COUNCIL

Point Baker Hand Trollers Assn.
Point Baker, Alaska 99927

Commercial Fisheries
Entry Commission
Pouch KB
Juneau, Alaska 99811

31 January, 1980

Dear Sirs:

The Point Baker Hand Trollers have read your Hand Troll presentation to the Board of Fisheries which you presented in Anchorage last month and offer the following comments and proposal in response.

We are deeply disturbed by your plan to force even more restrictive regulation on Alaskan Hand Trollers instead of reducing the number of permits. As you know, in the seventy some year history of Alaskan Salmon Trolling all trollers have been regulated equally up until eighteen months ago when hand trollers were expelled from the Coastal Fishing Zone. It was in anticipation of this first discriminatory troll closure and the ones that followed that promted the Point Baker Hand Trollers Association to push for limited entry with the understanding from the Board of Fisheries that these interim closures would then be lifted and the troll fishery would again be managed as one. Instead the Commission has opted for an unrealistically high number of permits and now suggests further regulation to reduce our efficiency. The majority of the testimony at the Commission's public hearings which supported such action came from part-timers and urban recreationalists who do not stand to loose their sole means of income as full-time trollers in Point Baker stand to loose.

The Commission seems to have taken in account the situation of everyone but the true fisherman, that is the full-time professional hand troller. "It is definitely not our intention to purposefully single out those individuals as the culprits of the hand troll fishery." You say concerning the more efficient professional hand trollers. "We would hope that through discussions among the Board, the Commission and other interested parties that a mechanism might be developed to 'Grandfather' those operations that have established themselves as models of the efficient hand troller." Although we disagree entirely with your plan to make hand trolling a relatively inefficient, highly regulated, "entry level" fishery, we feel your proposal to "Grandfather" professional hand troll operations is absolutely essential should your vision of the future hand troll fishery be followed.

To this end we propose that the 600 most economically dependent hand trollers be granted non-transferable "Grandfather Rights" to continue hand trolling as they did prior to June 1978, (on the same basis as power trollers.) The Board of Fisheries has already said that 600 hand trollers could readily be regulated on the same basis as power trollers, even considering potential increases in hand troll

efficiency. Considering that such "Grandfather Rights" would not be transferred with the transfer of the hand troll permit, the relatively efficient operations would steadily decline. Further investment in a dead-end mode of fishing among the "Grandfathered Hand Trollers" would have little incentive, as a well equipped four-line outside hand troller will have no future buyers. Remember, too, that many of these "Grandfathered Hand Trollers" have already achieved the maximun practical level of efficiency manageable with hand-cranked gear. Therefore, overall efficiency and effort of the "Grandfathered Hand Trollers" can be expected to drop steadily as people move out of the fishery, eventually phasing themselves out altogether.

The Point Baker Hand Trollers Association recommends that elgibility for "Grandfather Rights" be weighed on the following criteria:

1. Per cent of income derived from hand trolling in each year, 1975-1979.
2. Availability of alternative employment in place of residence, (size of community.)
3. Current and past participation, 1975-1980.

In rural communities like Point Baker and Port Protection where many families are totally dependent on hand trolling with no alternatives available, poverty, increased public assistance and dislocation of heads of family will be unavoidable if your vision of the future hand troll fishery comes to pass without at least providing the "Grandfather Rights" you suggest to establish full-time trollers.

Sincerely,

Tom Jacobson

Tom Jacobson, Hand Troller
Point Baker Hand Trollers Assn.

OUTSIDE WATERS DATA

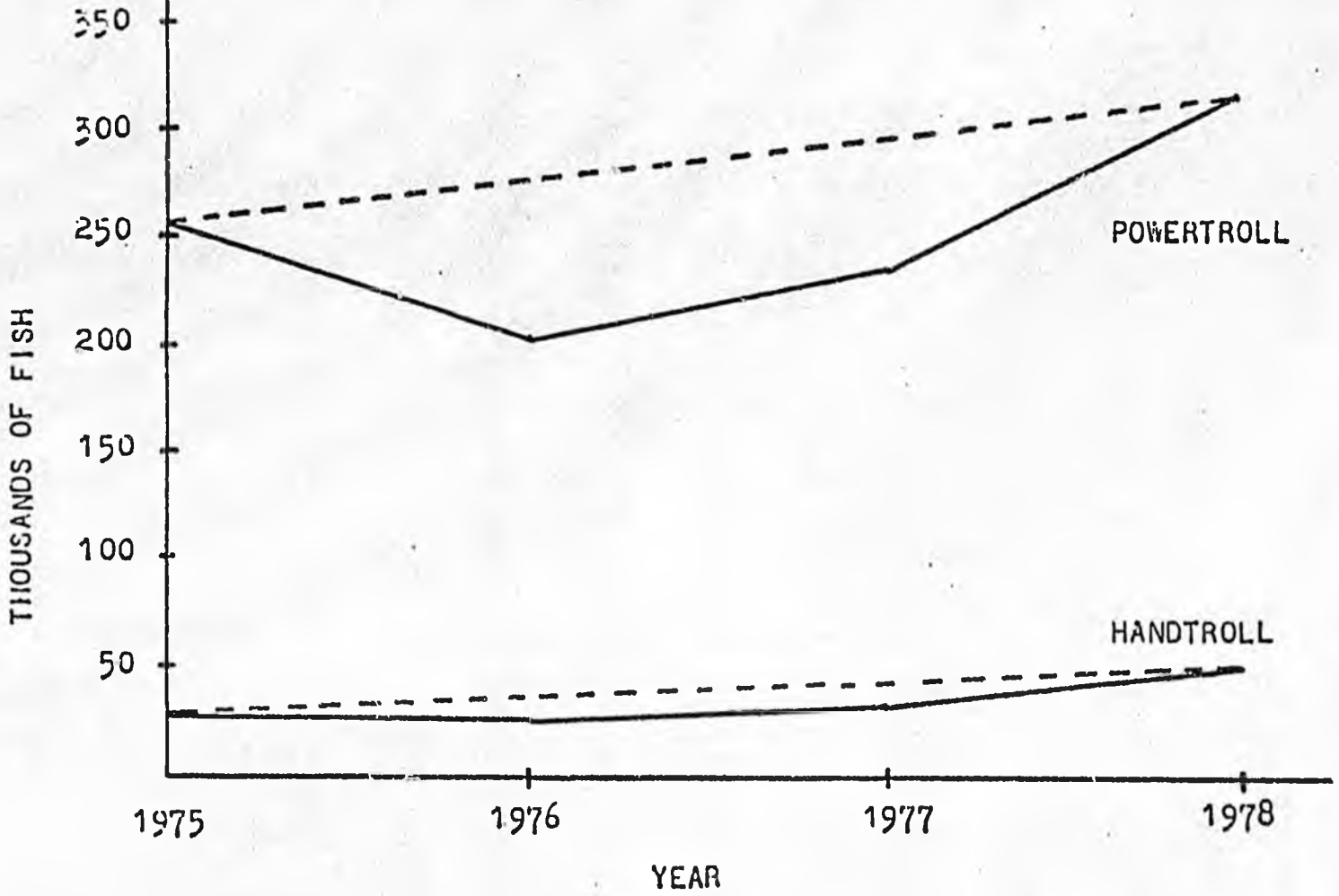
USING DISTRICTS 104, 113, 116, 152, 154, 157

NOTE: THESE FIGURES USE DISTRICT 113 WHICH INCLUDES A SUBSTANTIAL AMOUNT OF INSIDE WATERS SUCH AS SITKA SOUND, SALISBURY SOUND, ETC. THEREFORE THEY WILL TEND TO SHOW A LARGER AMOUNT OF FISH CAUGHT BY HANDTROLLERS ON OUTSIDE WATERS THAN WAS ACTUALLY THE CASE, SO ALL PERCENTAGES MAY BE CONSIDERED TO BE MAXIMUM PERCENTAGES.

COHOS:	1975	1976	1977	1978
NUMBER FISH TAKEN BY:				
POWERTROLLERS	51,693	234,330	156,689	414,257
HANDTROLLERS	2,332	17,442	21,946	47,580
TOTAL TROLL	54,025	251,772	178,635	461,837
% OUTSIDE TROLL FISH TAKEN BY HANDTROLLERS	4.3%	6.9%	12.3%	10.3%
AVERAGE OVER FOUR YEARS	8%			
TOTAL TROLL CATCH OF COHOS FOR SOUTHEAST	214,160	5247721	506,808	1,087,187
% SOUTHEAST TROLL COHOS TAKEN BY HANDTROLLERS IN OUTSIDE WATERS	1.1%	3.3%	4.3%	4.4%
AVERAGE OVER FOUR YEARS		3.3% 11		

KINGS:	1975	1976	1977	1978
NUMBER FISH TAKEN BY:				
POWERTROLLERS	154,331	100,741	157,237	236,863
HANDTROLLERS	5,769	4,563	10,098	16,274
TOTAL TROLL	160,100	105,304	167,335	253,137
% OUTSIDE TROLL FISH TAKEN BY HANDTROLLERS	3.6%	4.3%	6.0%	6.4%
TOTAL TROLL CATCH OF KINGS FOR SOUTHEAST	287,337	251,188	271,758	371,328
% SOUTHEAST TROLL KINGS TAKEN BY HANDTROLLERS IN OUTSIDE WATERS	2.0%	2.0%	3.7%	4.4%
AVERAGE OVER FOUR YEARS		3.0% 11		

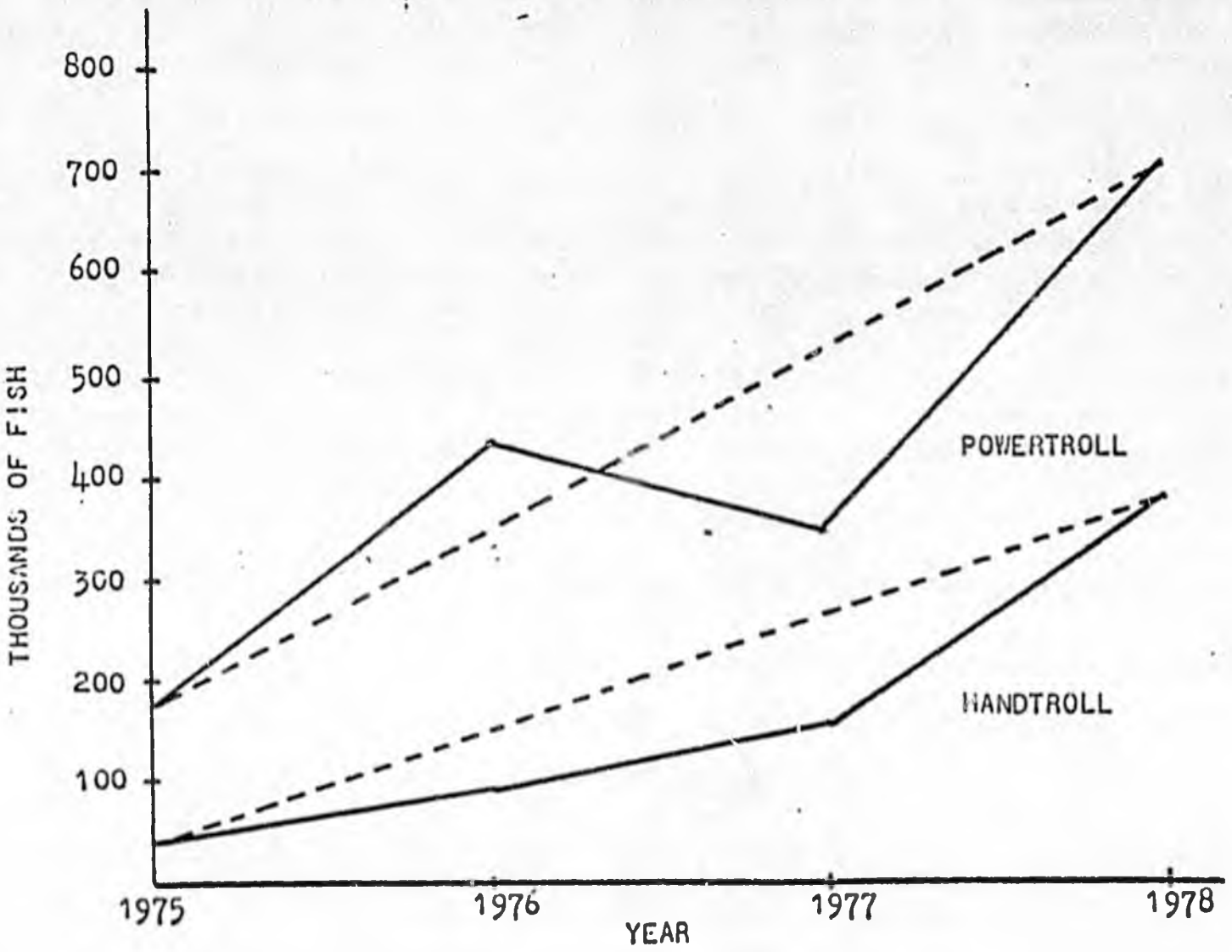
FIGURE 2



SOUTHEASTERN TROLL CATCH OF KING SALMON BY GEAR TYPE

EXPRESSED IN TOTAL CATCH

FIGURE 1



SOUTHEASTERN CATCH OF COHO SALMON BY GEAR TYPE

EXPRESSED IN TOTAL CATCH

Point Baker Hand Trollers Assn.
Point Baker, Alaska 99927

October 10, 1979

Commercial Fisheries Entry Commission
Pouch KB
Juneau, Alaska 99811

Dear Sirs:

The Point Baker Hand Trollers Association would like the following comments considered as part of your public hearing concerning the inclusion of Hand Trollers under limited entry. We limit our remarks at this time to the appropriateness of limited entry for the hand troll fishery, the proposed number of Permits, and potential inequities under a limited system.

For nearly two years the Point Baker Hand Trollers have publicly supported limited entry for the hand troll portion of the troll fishery. On January 22, 1978, we sent the Commercial Fisheries Entry Commission, the Board of Fisheries, and the Department of Fish and Game, a petition, signed by over 95% of all residents of Point Baker and Port Protection, in support of limited entry for hand trollers. In the letter accompanying the petition and proposal for limited entry we said:

> "The following proposal [for limited entry] is being made by full-time Hand Trollers living in Point Baker, Port Protection, and other small fishing villages. We are not recreational fishermen, but a diverse group of commercial trollers ranging from skiff-fishermen, content with near subsistence incomes, to former power trollers who were denied permits under limited entry. What we have in common is our overall dependence on commercial hand trolling for our livelihood, there being no alternative sources of income, practically available, where we live. Therefore, proposed changes in the hand troll fishery have total bearing on our futures, that of our families, and our communities."

Since then, our fears for the future of our fishery have proven justified. Later that year the Coastal Fishing Zone,

our most productive troll area, was closed to hand trollers, while remaining open to power gear and purse seines. The following year all of districts 1 and 14, and portions of districts 11, 12, and 15 were closed to hand trollers only, for 43% of the time. Every year recreational users of hand troll permits in the urban areas propose gear limitations that would destroy economically dependent hand trollers. Power troll and gillnet organizations then support the restrictions as a way to thwart what they perceive as a potential threat to "their" salmon resource by an "unlimited fishery."

Since 1978, the Board of Fisheries has repeatedly taken the stance that unless the growth potential of the hand troll portion of the troll fishery is limited, more and more restrictive regulations can be expected. For those of us completely dependent on trolling for our livelihood, with no alternatives available where we live, further restrictions applied exclusively to hand troll gear are totally unacceptable. Compared to others, our incomes are already meager. In Southeast Alaska's rural communities more public assistance and dislocation of families can be the only result if the hand powered portion of the troll fishery is not given the same protection of limited entry as every other commercial salmon fishery.

Our criteria for determination of the number of permits would be as follows:

1. That the number of permits be large enough so that all fishermen economically dependent on hand trolling can receive permits.

2. That the number of permits be small enough so that the Board of Fisheries cannot justify regulating the hand powered portion of the troll fishery more restrictively than those trollers allowed to use power.

One thousand one hundred (1,100) permits appears to be a very reasonable number, realizing, of course, that we do not have access to statistics on income dependence, location of residence, etc.

The Point Baker Hand Trollers Association has certain reservations concerning potential inequities under limited entry. While we emphasize that we would not want these concerns to

in any way threaten the inclusion of hand trolling under limited entry as soon as possible, they need to be addressed at some point in the future. They are:

1. Any point system developed must give much more consideration to economic dependence than has been given other fisheries. Specifically, percentage of income derived from hand trolling and residence in a locale with little or no alternatives for income, must be the primary determinants.

2. As we understand current proposals, those who fished for the first time in 1979 would not be eligible for a permit. Remembering that those who first power trolled in 1973 and 1974 were eventually allowed to apply for a power permit, (though not gain any extra points for that participation) we feel it only fair that first time hand trollers in 1979 at least be allowed to apply.

3. With the institution of limited entry some additional criteria for the issuance of restricted gear interim-use permits might be considered. Perhaps only "small commercial operations" as currently defined by the Department of Fish and Game, or perhaps those over 65 years of age, students, those eligible for public assistance, urban sportsmen on a lottery basis could be allowed to fish with one line on an interim-use basis. This might provide for a limited use of the resource by those non-dependent users who would likely be excluded under limited entry. The sale of sport-caught fish might be an alternative option.

4. Some method of future entry into the fishery, in addition to buying one's way in, needs to be developed. Somehow a way has to be found for new fishermen, particularly children growing up in rural areas, to obtain permits without having to buy them at prohibitive prices.

We applaud the Commission's efforts to finally include hand trollers under limited entry and hope these comments prove useful to that end.

Sincerely,

POINT BAKER HAND
TROLLERS ASSOCIATION

Tom Jacobson

TJ/es

Ketchikan Handtrollers' Association
P. O. Box 6237
Ketchikan, Alaska 99901

The Honorable Jay Hammond
Governor
State of Alaska
Juneau, Alaska 99801

February 14th, 1980

Dear Governor Hammond:

In the enclosed material we, the Ketchikan Handtrollers' Association, have clearly outlined our case and our position. Handtrollers are old people, young people, pioneers, students, businessmen, professional fishermen and Alaskans. There is just no moral or legal way way the Board of Fisheries can be allowed to systematically force us out of business. We are a part of Alaska's past, present, and future and we are just simply not going to fade away.

We ask you at this time to instruct the Board of Fisheries to repeal all time and area closures applicable only to handtrollers and also the four line-two line gear restriction. Furthermore, we ask that in the future the Board of Fisheries adopt policies which will manage and protect our fisheries resources in an equal and unbiased manner. After all, it is the responsibility of the Board of Fisheries to protect and manage the resource for the highest sustained yield, not to decide who lives or dies in the commercial fishing business.

Sincerely,

John Trout, President
Ketchikan Handtrollers' Association

enc.

handtroller's view

To the Editor:

I am concerned as to the impact of many existing and proposed regulations on those of us who are 'professional' handtrollers. In my own case, I am an independent Alaskan businessman with a substantial gear and vessel investment, a family of four and a 100% income dependency on the handtroll fishery. Having sold our home and fished for 3 seasons we have afforded ourselves a suitable trolling vessel. If we are allowed to earn a reasonable living in the next two seasons we will have saved enough money to buy a permit and enter the power troll fishery. Of what practical use is an 'entry level fishery' if the income opportunities do not provide a means for this type of advancement?

The proposed two-line limit will have a negligible impact on the smaller boats, weekenders, etc., while the larger boats, and again, those with the largest investments, putting forth the greater effort will suffer the greatest hardship.

If you must limit the units of gear, then do it, but at least let some of us continue to fish at our present income producing capabilities. Reducing several hundreds of self-supportive businessmen to welfare by cutting their income potential in half (again) is not my idea of an acceptable solution.

Handtrollers get business support

Individuals representing at least 24 businesses and the city mayor in Ketchikan have signed a petition endorsing the efforts of the Ketchikan Handtrollers Assn. in its legal challenge to fisheries management orders by the State Board of Fisheries.

The petition cites the Ketchikan group's "significant contribution" to Ketchikan's economy, and states that "protecting the viability of all fishery groups is a matter of public concern."

John Trout, president of the Ketchikan Handtrollers Association, in a recent letter to the American Civil Liberties Union, asked its help in determining the legality of the State Board of Fisheries' allocation of resources and its proposed gear restrictions for handtrollers.

The association is asking whether it has a basis for a legal challenge under restraint of trade and discrimination provisions of laws and the state and federal constitutions.

The handtroller letter states that there are about 2,100 active handtrollers and about 900 active power trollers, yet power trollers are allocated 80 percent of the total troll catch.

Handtrollers may challenge state fishery policies

KETCHIKAN (AP) — The Ketchikan Handtrollers Association is considering a legal challenge to fisheries management orders by the state Board of Fisheries, a member said Thursday.

Mark Wells of the association said the group, with about 20 active members, will contact the American Civil Liberties Union about a possible legal challenge.

"We want legal help from the ACLU regarding questions such as can the state protect and favor (one group of fishermen) by the allocation of the resource at the expense of another,'" he said. Also questioned by the handtrollers are proposed gear line limits.

Wells said the association wants to find out whether it may have a basis for a legal challenge under restraint of trade and equal protection provisions of laws and the state and federal constitutions.

Handtrollers asking A.C.L.U. for legal aid

EDITOR, The Daily News:

"We've got to hang on to all the rights we can!"

Ketchikan handtrollers report they are in contact with the American Civil Liberties Union seeking legal help in their fight for survival. Among questions being asked by the handtrollers are :

—Is it legal for the State of Alaska to protect and favor, by enforcing allocation of a resource, one group of fishermen at the expense of another?

—No other gear type under the limited entry system is allocated a portion of another gear type's catch. Is this restraint of trade?

—Is it legal for the State of Alaska to inhibit the productivity of, and thereby suppress the incomes of, several thousand handtrollers in order to affect allocation of 80 percent of a fishery resource to 900 power trollers? Is this discriminatory?

In the communicaton being prepared for the ACLU, handtrollers also state: "Handtrolling means different things to different people. A profession, a livelihood, a way of life, a student's summer job, the local economies of several small communities, etc. We feel that earning a living in this traditional fishery is a civil right, and that the practices of the Board of Fisheries which violate that right are not in accordance with the concepts of existing discrimination and trade laws."

John Trout, President
Ketchikan Handtrollers Assocation

Letters from Readers

Handtrollers protest

EDITOR, Daily News:
American Civil Liberties Union
630 W. 4th Ave.
Anchorage, AK 99501
Gentlemen:

We have been referred to you by the ACLU office in New York regarding some problems southeast Alaskan handtrollers are having with the Board of Fisheries and the Limited Entry Commission.

There are 2,100 or so active handtrollers and some 900 active power trollers. The power trollers are being allocated 80 percent of the total troll catch and the following are four steps taken by the Board of Fisheries to enforce that allocation.

1. Expulsion of the handtroll fleet from the "prime" coastal fishing zone. (1978)
2. Initiate eight-day-on, six-day-off closures applicable only to handtrollers in many areas. (1979)
3. Reduce the number of lines a handtroller may fish, from four to two.
4. Bring the handtroll fishery under limited entry.

Is it legal for the state to protect and favor by allocation of a resource one group of fishermen at the expense of another?

No other gear type under the limited entry system is allocated a portion of another gear type's fish catch. Is this restraint of trade?

Is it legal for the State of Alaska to inhibit the productivity of, and thereby suppress the incomes of, several thousand handtrollers in order to effect allocation of 80 percent of a fishery resource to 900 power trollers? Is this discrimination?

The Board of Fisheries contends that the 80 to 20 percent allocation must be maintained, justifying this with dubious references to a "historical" and "traditional" status quo. To quote a newsletter dated Dec. 19, 1979, from the Board of Fisheries, "The policy on which the management plan is based calls for maintaining the historical 80-20 percent harvest ratios within the total coho harvest." The catch records for handtrollers only go back to 1974. The professional handtroll fishery goes back 60 years.

Handtrolling means different things to different people— a profession, a way of life, a student's summer job, the local economies of several communities. We feel that earning a living in this fishery is a civil right and that the practices of the Board of Fisheries which violate that right are not in accordance with the concepts of existing discrimination and trade laws.

We at this time feel an urgent need to challenge the legality of discriminatory allocaton of resources by the state and set legal precedents ensuring the protection of all fisheries and all fishermen from this unjust and dangerous practice.

A timely injunction lifting the four-line to two-line handtroll regulation for the 1980 season would be of enormous help. We have neither the organizatonal strength nor the funds to bring this matter to court. Indeed, the cost of pursuing justice in our court systems exceeds our means. Any assistance or advice you can offer on this matter will be greatly appreciated.

Sincerely
JOHN TROUT
President
Ketchikan Handtrollers Assn.

CEDAR PRODUCTS
Manufacturers of Custom Cut Fence Materials · Split and/or Sawed Western Red Cedar

Memo: to regulation review Committee From: Hand trollers

3,4,80

Problem: To the thousand or more hand trollers who make their principle living by fishing; the 2-gurdie law is the last straw. To these people this law is not just a restriction but a force that is breaking their way of life that historically is thousands of years old. To them it threatens their life itself.

Reasoning: Because it is a law does not make a law right nor good nor just; It only makes it legal. In Rome a Democracy every citizen has not only the right but the duty to question and contest any law he thinks unjust. For this reason some of the hand trollers have come to this meeting.

The various injustices of limited entry have been rehashed many times and most have been accepted as the lesser of 2 evils. However the restrictive law prohibiting a livelihood within the hand troll fishery is intolerable if a person qualifies otherwise for a limited entry permit.

The cost of fuel and other expenses are the same for 2-gurdie fishing as for 4, but that expense must be taken from

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half the opportunity to catch fish. Also the hand troller finds himself holding the bag having paid for twice as much gear as he is allotted to use.

Answer: In the qualifying point system let there be two types of permit. One for those who make all their living from fishing allowing 4 gurdies, and one for those who have other income to be allotted only 2 gurdies.

To provide for a future younger generation of fishermen, let there be no ownership nor sale of permits, but let them return to the commission to be applied on a first come - first served basis to a list of new applicants.

No one should be allowed a permit unless he fishes the permit.

Finally: As a personal request I would like the Governors office to review and shorten the 5 year residency moratorium on a fishermans loan if he qualifies in all other respects with the loan association.

Respectfully yours

Ed Ray R. Sarff

P.O. Box 1312
Wrangell, Ak.
99929

Gentlemen:

I moved to Wrangell three years ago after living ten years in Fairbanks. I moved to Wrangell with the sole purpose of somehow getting into the commercial fishing industry. I chose hand-trolling which, at that time, seemed to be a viable and reasonable means of support. And indeed, it was. AT T' .T TIME.

I fished the first year from a 14 foot skiff with two down-riggers and a fishing rod. My production from this skiff and especially the production from larger hand-troll boats convinced me that I could make a living within this fishery. At that time, the hand troll fishery was considered to be "an entry level fishery." Meaning that you could make enough money for a living and gain knowledge enough to go onto something more lucrative, if you so chose.

The next spring, I invested about $10,000, most of it borrowed, into a 28 foot troller.

That year, my second, I sold about $8,000 worth of fish. I began the season with only two lines and worked my way up to four, buying the other gurdies and line as I could afford them. I fished steadily from the first of May into late October. It was that year that hand trollers were prohibited from fishing in outside waters. This didn't bother me because I had no intention of going out there anyway. In fact, this regulation encouraged me because I, of course, had heard the talk that "they" would be restriciting the hand troll fishery (because the powerrtroll fishery was complaining that there were too many hand-trollers). I was encouraged because I thought, "WEll, here is the restrcition--- the power trollers now have the best fishing grounds and I wasn't planning on fishing there anyway--- so this restriction does not alter my outlook on the possibility of making a living." Further, I thought that this was probably enough of a concession to keep them off our backs. hey have the best fishing ground, what more could they want? At the time, I even thought that maybe this regulation was fair and honest because, after all, they did have larger investments and expenses than hand-trollers. And maybe they should have an advantage. And maybe when I got a power troll licsense, I would feel the same way. In the meantime, I knew it was still possible to make a living fishing the inside waters. You certainly wouldn't get rich but you could at least make a living at it.

The next year saw even more restrictions for the hand-troll fishery. Specifically, the 8-on, 6-off closures in certain areas. None of these were areas in which I fished, so I still figured I could make a living although I knew that these closures would probably put more pressure on the areas where I did fish. Still, that year, last year, I improved my business to a gross sale of $16,000 and was, by then, totally convinced that even with these additional restrictions, I could still earn a living. Surely, it seemed that we in the hand troll fishery had been penalized enough with these two major restrictions in as many years. Surely, in such a short period of time, there would be no more major restricitions. We could still make a living, however reduced.

And now, now the Board of Fisheries tells us that this year we may use only two lines.

The Board gives us two or three months notice that our gear has been cut in half!

The Board gives us two or three months notice that our already marginal incomes are to be cut by at least 1/3.

The Board gives us two or three months notice that we are no longer engaged in a fishery that can provide us with a reasonable chance of making a living.

The Board gives us two or three months notice that hand-trolling is no longer a commercial fishery but merely some kind of expensive hobby to be enjoyed by those who can afford it. By reducing hand-trolling to merely two lines, the Board immediately and casually eliminates the so-called professional hand-troller and reduces the fishery to a mockery of what it was just two and three years ago. The Board has made a mockery out of the profession we have chosen, ~~with the Board's previous blessing~~, and we feel, understandably I think, cheated.

Let us take an honest look at the hand-troll fishery. Basically, as a commercial fishery, it is a dishonest fishery in that most people who hold and desire hand-troll permits have no intention of making a living at it. These people, and they are in the majority it seems, have other sources of income and view hand-trolling as a pleasant pasttime with which to supplement their incomes. We can go further. There are many people holding hand-troll permits who do not need or even want income from them. With the permit, which costs $40, and with two or three fishing rods, which they would own anyway, the hand-troll permit provides a convienient, and legal, method of tax evasion. With an investment of less than one hundred dollars they are able to write off a $50,000 boat as a business expense.

This, perhaps, is common knowledge, but must be mentioned so that the other side of the coin may be more clearly seen.

The other side of the coin is this: Hand-trolling may also be, and has been for a lot of people, a very honest way commercial fishery. There are those of us who go at it full-time, those of us who [illegible] to make most, if not all, of our yearly income from hand-trolling. There are those of us who declare this income and pay taxes on it instead of receiving a tax benefit. We entered this fishery with an honest desire to make a living at it and indeed, the State encouraged us by referring to hand-trolling as an "entry level fishery."

We now contend that given the stringent restrictions of the last two years, and especially with the introduction of a two line limit proposed for this year, hand-trolling is no longer a viable means of support. It no longer qualifies as an "entry level fishery" but rather has been made into a subtle form of tax evasion encouraged by the Board of Fisheries ~~another~~ with their two-line limit, which, by defintion, separates the serious hand-troller from the fraudulent hand-troller.

We, the professional hand-trollers of South-east Alaska, we who have improved our efforts and our businesses into something that can support us, probably number no more than three or four hundred permits. We wonder if it was the Board s intention to take our livlihood from us. We trust not.

We recognize the problems facing the Board in dealing with the question of limited entry within the hand-troll fishery. We wonder if the Board recognizes our problem of making a living within the hand-troll fishery. With this latest restriction of just two lines, we think not. We believe that the Board has the responsibility of looking out for our intersts as well as for the intersts of the salmon stocks. We, who entered the fishery in good faith and performed and conducted ourselves as commercial fishermen, now feel abandoned by those who would govern us. We question their ~~intelligence~~ justification. We question their motives. Most of all, we question their compassion for those of us financially dependent upon hand-trolling.

We ask the Board to reconsider its decsion to limit, with such short notice, our gear to two lines. We ask the Board to search within its own conscience to determine if there are not some of us entitled to certain "grandfather rights"; specifically, the right to fish with the same gaer in 1980 and in future years as we have been permitted to do in the past.

We ask that the four line limit be somehow worked into the limited entry program for hand-trolling. Since we are a divided fishery---divided between "serious" and, for lack of a better word, "amatuer" fishermen, we ask that this distinction be made when the limited entry permits are ~~finally~~ finally issued.

We propose that the Board issue two classifications of hand-troll permits. Let us refer to them as Class A and Class B permits. For a Class A permit, we ask the Board to determine, through fishing receipts and tax records available to them, the number of people dependent upon hand-trolling for a substantial proportion of their income. We ask that these people who have demonstrated a desire and ability to earn a living by hand-trolling be issued a Class A permit allowing them to fish four (4) lines and to be governed by the rules and regulations pertaining to its sister fishery, the Power Troll fishery. We merely ask that the recipients of a Class A licsense be selected in such a way that those people most dependent upon the fishery for their livelihood, receive them.

The Class B licsesne shall be distinguished by a 2 line limit and whichever of the current hand-troll regulations the Board deems necessary to retain.

We believe that this proposal best represents the interests of those involved in this controversy. Therefore, it reflects the best application of ~~its~~ democratic principals. A Class A licsense protects those who have entered the fishery with the intention of making a living at it. A Class B licsense will satisfy those who are looking for entertainment and a tax write-off. Hopefully, with the addition of a "use it or loose it" clause, Class B permits will someday be in the hands of those who wish to enter into commercial fishing.

Finally, we hope that this proposal represents the desires of the Board, which, it seems, should be to find a way of controlling the fishery without putting out of business those who are dependent upon it. The Class A and Class B proposal allows the Board to regulate exactly the number of hand-troll lines in the water while still issuing a maximum number of permits.

We are grateful for the chance of being heard by this special committee. It has done much to restore our faith in the democratic process, a process, which lately, we, as fishermen, have become skeptical of. We recognize the need for commercial fishing regulations. However, we do not believe that at this point in time the salmon stocks are so depleted and so desperate as to warrent a reaction by the Board which so severely restricts our ability to earn a living. We ask this committee to convey this feeling to the Board. We ask this committee to consider the closenesss of the 1980 fishing season and to consider the finanacial impact of being informed, with only two or three months notice, that your gear is being cut by 50%. ~~We ask this committee to convey our feelings and situation to the Board of Fisheries~~. We ask this commiteee to reccomend that the proposed two-line limit for 1980 be lifted until a more reasonable and equitable solution can be found.

Thank you,

Ron Rau



MY NAME IS TOM JACOBSON. I'M FROM POINT PROTECTION, A SMALL FISHING VILLAGE NEAR PT. BAKER ON PRINCE OF WALES ISLAND. MY SOLE SOURCE OF INCOME FOR THE PAST 6 YEARS HAS BEEN FROM HANDTROLLING. I'M HERE REPRESENTING THE SO SOME COMMERCIAL HAND TROLLERS IN THE VILLAGES OF PT. BAKER AND PORT PROTECTION. CENTERS OF CONTINUOUS HAND TROLL ACTIVITY FOR OVER 50 YEARS. THE POINT BAKER HAND TROLLERS DEPEND ALMOST ENTIRELY ON OUR HT INCOME FOR OUR SURVIVAL, THERE BEING NO OTHER VIABLE ALTERNATIVES IN OUR SMALL ISOLATED VILLAGE. ~~AREA~~ ALTHOUGH OUR INCOMES ARE RELATIVELY MEAGER, THEY HAVE BEEN SUFFICIENT TO SUSTAIN AN ADEQUATE STANDARD OF LIVING. HOWEVER, REGULATIONS DESIGNED TO DENY US THE RIGHT TO FISH TRADITIONAL ~~WATERS~~ GROUNDS (SUCH AS THE CLOSURE OF OUTSIDE WATERS), REGULATIONS TO REDUCE OUR GEAR BY 50% (THE NEW 2-LINE LIMIT), AND PROSPECTS FOR STILL MORE RESTRICTIONS ~~PROPOSED~~ TO COME WILL HAVE A DISASTROUS EFFECT ON THE SOCIO-ECONOMIC WELL BEING OF OUR COMMUNITY. NOT HAVING THE TYPE OF VESSELS OR THE CAPITAL REQUIRED FOR PERMITS AND GEAR IN ORDER TO ENTER A DIFFERENT FISHERY, WE WILL FACE THE PROSPECT OF LEAVING HOMES AND FAMILIES TO SEEK EMPLOYMENT IN TOWN OR SUCCUMBING TO PUBLIC ASSISTANCE. IF ALL THIS WERE THE RESULT OF THERE BEING NO MORE SALMON IT WOULD BE A REGRETTABLE BUT UNDERSTANDABLE CIRCUMSTANCE BUT MAN, NOT THIS IS THE RESULT OF INSENSITIVE

STATE BUREAUCRACY, HENCE BY USING HANDTROLLERS AS THE SCAPEGOAT FOR PROBLEMS UNRELATED TO OUR CATCH OF FISH. LET'S PUT THIS SITUATION IN PERSPECTIVE. IN 1978, THE YEAR OF HIGHEST HT EFFORT, ALL HANDTROLLERS OF THE SALMON CAUGHT IN SOUTHEAST ALASKA, ONLY 3.1% WERE CAUGHT BY HANDTROLLERS, ACCORDING TO FISH & GAME STATISTICS. AND LAST YEAR, BOTH THE NUMBER OF HT PERMITS FISHED AND OUR PROPORTION OF CATCH DROPPED EVEN LOWER. WHILE HANDTROLLERS ARE BEING SUBJECTED TO CLOSURES OF OUTSIDE WATERS AND TIME RESTRICTIONS ON CERTAIN INSIDE WATERS, A 50% REDUCTION IN LCM, AND MORE RESTRICTIONS PROMISED TO COME, THE POWER TROLLERS REMAIN TOTALLY UNAFFECTED. THEY NOW MAY CONTINUE TO USE 4 LINES AND FISH WATERS NOW CLOSED TO HANDTROLLERS ONLY. PURSE SEINING AND GILLNETTING WILL CONTINUE IN AREAS AND DURING TIMES WHEN HANDTROLLERS CAN NOT FISH. THE GROUP OF FISHERMEN WHO HAVE BY FAR THE LEAST IMPACT ON THE SALMON RESOURCE AND CAN LEAST AFFORD FURTHER ECONOMIC HARDSHIP, HANDTROLLERS ARE RECEIVING THE FULL BRUNT OF THE STATE'S FISHING RESTRICTIONS, WHILE SALMON FISHERIES ON THOSE FISHERMEN WHO HAVE HAD THE GREATEST IMPACT ON THE SALMON RESOURCE ARE BARELY EFFECTED. CLEARLY HANDTROLL RESTRICTIONS ARE TECHNOLOGICALLY CONSERVATION PRIMARILY NOT CONSERVATION MEASURES BUT AN UNWARRANTED INFRINGEMENT OF THE LIVELIHOOD OF ALASKAN CITIZENS. ELIMINATION OF [illegible] INDIVIDUAL CATEGORIES WITHOUT JUSTIFICATION

WE WISH TO UNDERSCORE THE FACT THAT THE PT. ANGELES
HANDTROLLERS ENCOURAGE AND SUPPORT ALL MEANINGFUL
REGULATIONS THAT WILL CONSERVE THREATENED & ENDANGERED
STOCKS. BUT, WE DEMAND EQUAL TREATMENT UNDER
THE LAW. THE TROLL FISHERY MUST BE REGULATED AS
ONE FISHERY WITH ALL FISHERMAN SHARING CONSERVATION
EFFORTS EQUALLY, THAT HAS ALWAYS BEEN TRUE AMONG
TROLLERS, REGARDLESS OF GEAR IN THE 70 YEAR HISTORY OF
PUGET SOUND TROLLING, IT WASN'T UNTIL JUNE 1978, WITH
CLOSURE OF OUTSIDE WATERS TO HANDTROLLING, CAME
THAT THE FIRST ANY REGULATION WAS MADE WHICH
APPLIED ONLY TO ONE GROUP OF TROLLERS. IN THE 4 YEARS
PRECEDING THIS DISCRIMINATORY CLOSURE OF OUTSIDE WATERS,
HT ACCOUNTED FOR LESS THAN 3% OF THE LESS THAN 3%
OF TROLL CAUGHT KINGS & COHOS WERE CAUGHT
SOUTHEAST
BY HT IN OUTSIDE WATERS. YET TO THOSE HT WHO FISH
TRADITIONALLY
THESE WATERS, IT ACCOUNTS FOR THE MAJOR PORTION OF THEIR
INCOME. CLEARLY THIS WAS NOT PRIMARILY A CONSERVATION
MEASURE, AS POWER TROLLERS AND PURSE SEINERS WHO ACCOUNT
FOR NEARLY ALL SALMON TAKEN IN OUTSIDE WATERS, WERE
COMPLETELY UNAFFECTED BY THIS CLOSURE. WHEN THE
NORTH PACIFIC MGMNT. COUNCIL SUBMITTED THEIR 1979
TROLL PLAN TO THE SEC. OF COMM. IN WASHINGTON D.C.
WITH A PROVISION TO BAN HT TROLLING IN FEDERAL WATERS,
THE U.S. SECRETARY OF COMMERCE REJECTED THE HAND TROLL PLAN
STATING "AFTER STUDYING ALL AVAILABLE INFORMATION, I
HAVE DETERMINED THAT NO CONSERVATION PURPOSE IS

SOLVED BY DISTINGUISHING H-T FROM P-T GEAR.

I HAVE DETERMINED THAT THIS MEASURE IS INCONSISTENT WITH THE FAIRNESS AND EQUITY PROVISIONS OF NATIONAL STANDARD 4. THE PROPOSED BAN WOULD ALLOCATE FISHING PRIVILEGES UNFAIRLY BETWEEN 2 GROUPS OF FISHERMEN WHO USE ESSENTIALLY THE SAME TYPE OF GEAR." THE STATE REACTED BY PROHIBITING ALASKAN HANDTROLLERS FROM PARTICIPATING IN THE FEDERAL WATERS FISHERY, IN SPITE OF WASHINGTON'S INSISTENCE THAT HANDTROLLERS ARE POINTING TO FISH THERE. HANDTROLLERS FROM OTHER STATES MAY STILL LEGALLY FISH THESE WATERS.

THE STATE'S ALLOCATION OF FISHING PRIVILEGES UNFAIRLY BETWEEN 2 GROUPS OF FISHERMEN WHO USE ESSENTIALLY THE SAME GEAR", TO WHICH THE SECRETARY OF COMMERCE OBJECTS, IS PRECISELY WHAT THE BOARD RESOLVED IN ITS POLICY TO ALLOCATE THE COHO CATCH BETWEEN PT's AND HT's ON AN 80% - 20% BASIS. (BY THE WAY, PT's & HT's REALLY DO USE PRECISELY THE SAME GEAR, FROM HOOK TO GAFF-HOOK, FISH THE SAME AREAS, WITH THE SAME STRATEGIES, FOR THE SAME SPECIES THE ONE AND ONLY DIFFERENCE IS THAT POWER TROLLERS USE MECHANICAL MEANS TO RETRIEVE THE GEAR WHILE HAND TROLLERS USE MANUAL MEANS.) THIS POLICY OF ALLOCATING 80% OF THE TROLL CAUGHT COHOS TO POWER TROLLERS IS THE JUSTIFICATION GIVEN FOR CUTTING THE HAND TROLLER'S GEAR IN HALF, BY THE 2-LINE LIMIT REGULATION, WHILE ALLOTTING SALMON TROLL & NET, BOTH WILL CONTINUE TO USE THE SAME GEAR.

AMOUNT

FURTHERMORE, IF THE BOARD IS "CONCERNED" ABOUT POWER TROLLERS NOT EXCEEDING THEIR 80% OF THE TROLL CATCH OF COHOS, WHY WITH DO THEY PROPOSE TO LIMIT US TO 2 LINES 12 MONTHS A YEAR, WHEN COHOS ARE ONLY CAUGHT FROM MID JUNE TO MID SEPTEMBER? AGAIN, THE SMALL PROPORTION OF COHOS THAT IS TAKEN BY HANDTROLLERS EACH YEAR IS NOT JUSTIFIED BY A 50% GEAR REDUCTION IN OUR GEAR FOR HANDTROLLERS ONLY, AND FOR THEM AND CERTAINLY NOT FOR THE 9 MONTHS A YEAR WHEN COHO'S ARE NOT CAUGHT! WHILE IT IS TRUE THAT HANDTROLLERS IN 1979 CAUGHT 204,000 MORE COHOS THAN THEY DID IN 1975, POWER TROLLERS CAUGHT OVER 500,000 MORE COHOS IN 1979 THAN IN 1975. CLEARLY THE EFFORT OF POWER TROLLERS HAS INCREASED MUCH GREATER MORE THAN HANDTROLLERS, YET IT IS ONLY THE HANDTROLLERS WHO ARE HAVING THEIR GEAR CUT BY 50%. THIS IS NOT CONSERVATION BUT SOCIAL AND ECONOMIC MANIPULATION. THIS UNJUST ALLOCATION POLICY BETWEEN TROLLERS ALSO TORPEDOED THE COMM. FISH. ENTRY COMMISSIONS ATTEMPTS TO IMPLEMENT A WORKABLE LTE ENTRY SYSTEM FOR HANDTROLLERS. BY DIRECTING THE COMMISSION TO LIMIT THE NUMBER OF PERMITS TO A NUMBER WHICH GUARANTEES POWER TROLLERS GATHER 80% OF THE TROLL COHOS, THE NUMBER OF PROPOSED PERMITS BECAME SO SMALL THAT THE MAJORITY OF POPULAR OPINION AT THE COMMISSION'S PUBLIC HEARINGS ON THE MATTER WAS DISAPPROVED OF THE COMMISSION'S PLAN. THE COMMISSION THEN PROPOSED A LARGER NUMBER OF PERMITS. UNACCEPTABLY HIGH BY THE BOARD'S ALLOCATION STANDARD, WITH THE RESULT THAT EVEN MORE ALLOCATIONAL INEQUITIES ON HANDTROLLERS ALLOCATIONS WERE SO KNOW WE HAVE A [illegible]

ENFORCEMENT OF RESTRICTIONS WHICH WERE SUPPOSED TO HAVE BEEN IMPOSED ONLY FOR THE INDIAN CUTTLE LTD. ENTRY WAS ENACTED FOR HAND TROLLERS, AND THE PROPOSAL FOR NEW, EVEN MORE RESTRICTIVE REGULATIONS ON THE WAY.

THE PT. BAKER HAND TROLLERS ASSOC. HAS SPENT COUNTLESS HOURS RECENTLY WHICH WE DON'T HAVE PUZZLING OVER OUR STATE'S FISHING BUREAUCRACY TRYING TO PLAY BY THEIR RULES HOPING TO COME UP WITH WORKABLE SOLUTIONS THAT WILL WORK BY THEIR STANDARDS. MONEY, WHICH WE DON'T HAVE, HAS BEEN SPENT ATTENDING MEETINGS ALL IN THE HOPE THAT JUSTICE MAY PREVAIL. OUR CAREFULLY THOUGHT CONSIDERED, BY-THE-RULES PROPOSALS HAVE BEEN POLITELY RECEIVED AND STUDIOUSLY IGNORED IN DRAFT COMMENT. ATTACHED ARE COPIES OF OUR COMMENTS REGARDING THE COMMITTEE WITH A COMMENTS WE MADE LAST FALL WHEN THE TROLL MANAGEMENT PLAN AND LTP. ENTRY PROGRAM WERE BEING FORMULATED. WE WOULD BE DELIGHTED TO WORK WITH ANY LEGISLATORS ~~DRAFTING BRING SOME SENSE OF FAIRNESS TO THIS~~ TO DRAFT LEGISLATION TO BRING SOME SENSE OF FAIRNESS TO THIS BUREAUCRATIC JUNGLE. WE HATE TO ONCE AGAIN SEE THE LITTLE GUY SQUEEZED OUT BY THE BIG GUY NEEDLESSLY THRU THE POWER OF OUR STATE GOVT. ESPECIALLY SINCE WE ARE THE LITTLE GUY. THE HOPES AND FUTURES OF MANY FAMILIES AT PT. BAKER AND ELSEWHERE ARE NOW LITERALLY IN THE HANDS OF THIS COMMITTEE. ~~OUR LAST RESORT~~ YOUR CAREFUL STUDY AND CONSIDERATION OF THE ISSUE IS OUR LAST HOPE FOR A REASONABLE RESOLUTION OF OUR SITUATION. IT IS DIFFICULT TO PREDICT WHAT ACTIONS INDIVIDUALS ~~DESPERATELY~~ WILL TAKE SHOULD THEIR SOURCES OF SUPPORT BE UNJUSTLY TAKEN AWAY.

THANK YOU

4/28

THE FOLLOWING:

(1) the handtroll petition that will be considered by the Board of Fish in March is item #VI-1 on page 7 under notice of proposed changes...etc.

(2) the largest group of papers contain the Southeastern Alaska and Yakutat area salmon troll regulations adopted by the Board of Fish during Dec. 78 and Jan. 80. Expect they will be approved by the Department of Law for filing by March 1.

(3) The smaller group of papers, about 4 pages, are regulations on the salmon troll fishery that were adopted by the Department of Fish and Game under delegation from the board. They were delivered to the Department of Law yesterday, so probably will not be approved for filing until mid to late March.

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS
OF THE ALASKA BOARD OF FISHERIES

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Alaska Board of Fisheries, under authority vested by Alaska Statutes 16.05.251, 16.05.475, 16.05.690, 16.05.940, 16.10.380, 16.10.440, and 16.20.260 proposes to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret and make specific the provisions of Title 16, Alaska Statutes.

Regulations to be the subject of Board action concern subsistence fishing, commercial fishing, sport fishing, and habitat protection.

The Board of Fisheries may adopt, amend, repeal or take no action on the proposed regulatory changes listed in the following informative summary:

SECTION I. SOUTHEASTERN-YAKUTAT AREA.

A. In the Subsistence Shellfish Fishery:

1. Change the boundary for the area in which the king crab season and size limit applies, so that the area will include all inside waters north of the latitude of Cape Spencer.

2. Increase the king crab season.

3. Establish separate legal size limits for abalone taken with or without diving gear.

B. In the Commercial Shrimp Fishery:

1. Reduce the season for taking shrimp with pots in districts 3, 4, and 5, reduce the shrimp pot limit in districts 3 and 4 and establish a pot limit in district 5.

2. Establish a guideline harvest level for shrimp taken in Cholmondely Sound.

3. Prohibit the use of trawls for taking shrimp in Lituya Bay.

C. In the Commercial Dungeness Crab Fishery:

1. Increase or reduce the dungeness crab fishing season and provide separate dungeness crab fishing seasons for the Southeastern and Yakutat portions of the area.

2. Increase the area closed to dungeness crab fishing in district 11.

D. In the Commercial King Crab Fishery:

1. Change the opening and closing dates for the king crab fishing season.

2. Require that a permit be obtained from the commissioner prior to taking brown king crab during a specific season and provide provisions that can be required by the permit. Such provisions may include, but not be limited to, harvest area and reporting requirements.

3. Provide a guideline harvest level for king crab in the Yakutat districts.

4. Allow the use of ring nets for taking king crab, reduce the king crab pot limit in districts 3, 4 and 5 and require that king crab pots be removed from the water during specified time periods.

5. Increase the area closed to king crab fishing in district 11.

E. In the Commercial Tanner Crab Fishery:

1. Require that all tanner crab pots be removed from the water during the closed tanner crab fishing season.

2. Change the opening and closing dates of the tanner crab fishing season.

3. Reduce the legal size limit for tanner crab.

4. Provide a tanner crab pot limit for the Yakutat districts.

F. In the Commercial Abalone Fishery:

1. Prohibit the commercial harvest of abalone.

2. Establish a season for taking abalone and provide guideline harvest levels.

3. Limit the amount of gear that may be fished from an abalone fishing vessel.

4. Prohibit shipment out of the state of live unprocessed abalone, require that persons shipping abalone out of the state contact the department and have the abalone inspected prior to shipment, prohibit the shucking of abalone until they have been inspected by the department and adopt other regulations to prevent the harvest of undersized abalone and insure that harvest reporting requirements are complied with.

G. In all Commercial Shellfish Fisheries:

1. Prohibit the taking of crab and abalone in areas adjacent to any community.

H. In the Commercial Salmon Fishery:

1. Change the salmon fishing season opening date in section 1-B.

SECTION II. PRINCE WILLIAM SOUND AREA.

A. In the Subsistence Shellfish Fishery:

1. Establish a daily bag and possession limit and legal size limit for dungeness crab and prohibit the taking of female dungeness crab.

B. In the Commercial Shrimp Fishery:

1. List Kodiak as an inspection and reinspection point for shrimp fishing vessels.

C. In the Commercial Tanner Crab Fishery:

1. Reduce the tanner crab fishing season.

D. In the Commercial Clam Fishery:

1. Allow the taking of gaper clams and change the opening and closing dates for the clam fishing season.

E. In the Commercial Trawl Fishery:

1. Allow the use of trawl gear in portions of Hinchinbrook Entrance now closed to the use of trawl gear.

SECTION III. COOK INLET AREAS.

A. In the Commercial Shrimp Fishery:

1. Change the registration deadline for shrimp trawl vessels and require operators of shrimp trawl vessels to report their catch to the department prior to landing.

2. Establish seasons and weekly fishing periods and change the guideline harvest levels for taking shrimp with pots.

3. Change the seasons, weekly fishing periods and guideline harvest levels for taking shrimp with trawls.

4. Define a selective shrimp trawl and establish a season for its use in taking shrimp.

B. In the Commercial Dungeness Crab Fishery:

1. Change the dungeness crab fishing season in the Southern district.

C. In the Commercial Clam Fishery:

1. Increase the Polly Creek certified clam harvesting area.

D. In the Subsistence Finfish Fishery:

1. Provide a season, weekly periods, open and closed areas, bag and possession limits, permit requirements, gear and operation requirements, and other necessary regulations to allow the taking of king salmon for subsistence purposes in the Northern district.

SECTION III. WESTWARD (KODIAK, CHIGNIK, ALASKA PENINSULA, DUTCH HARBOR, ADAK AND BERING SEA) AREAS.

A. In the Subsistence Shellfish Fishery:

1. Establish a subsistence king and tanner crab pot limit in the Kodiak area.

B. In the Commercial Shrimp Fishery:

1. Change the shrimp fishing seasons for the South Peninsula district and the Unalaska Bay section.

2. Reduce the guideline harvest level for shrimp in the South Peninsula district.

3. Repeal the shrimp trawl gear restrictions for the Inner Marmot Bay and Kalsin Bay sections.

C. In the Commercial King Crab Fishery:

1. Change the Adak and Bering Sea king crab areas to exclusive registration areas, prohibit vessels registered for the Kodiak king crab area from fishing any other king crab area, repeal the registration deadline for the Kodiak king crab area and change the registration deadline for the Cook Inlet king crab area.

2. Change the king crab vessel tank inspection requirements for the Kodiak king crab area.

3. Establish sections for the districts of the Kodiak king crab area.

4. Change the opening and closing dates for the king crab fishing season in all the Westward king crab areas.

5. Change the legal size limit for king crab for the Kodiak and Bering Sea areas.

6. Change the king crab guideline harvest levels for all the Westward king crab areas.

7. Provide that the department may allow district transfer of king crab vessels in the Dutch Harbor and Bering Sea king crab areas after determining there will be no enforcement problem.

8. Change the requirements for removal of king crab pots from closed waters for all the Westward king crab areas.

9. Change the king crab pot limit for the Kodiak king crab area.

D. In the Commercial Tanner Crab Fishery:

1. Establish portions of the Westward tanner crab area as exclusive registration areas.

2. Establish sections in the Kodiak tanner crab district.

3. Change the opening and closing dates for the tanner crab fishing seasons in all the districts of the Westward tanner crab area.

4. Establish tanner crab pot limits for the Kodiak and South Peninsula districts.

5. Change the requirements for removal of tanner crab pots from closed waters for all districts of the Westward tanner crab area.

6. Establish tanner crab vessel tank inspection requirements for all districts of the Westward tanner crab area.

7. Establish a tanner crab vessel district registration system for the Westward tanner crab area, including provisions for the number of districts a vessel may register for, changing district registration, movement of gear and crab between districts, validation of registration and suspension or exemption of registration requirements.

E. In the Commercial Miscellaneous Shellfish Fishery:

1. Establish a season and area for the taking of Korean hair crab in the Westward miscellaneous shellfish area.

2. Clarify in what portion of the Westward miscellaneous shellfish area scallops may be taken during the period June 1 through March 31.

SECTION IV. BRISTOL BAY AND ALASKA PENINSULA AREAS.

A. In the Commercial Salmon Fishery:

1. Adopt a Bristol Bay Sockeye Salmon Management Plan. The plan may include, but is not limited to, changes to seasons, weekly fishing periods, gear, gear operation and specification requirements, vessel specifications, operation and registration requirements, closed waters, and other provisions that will maximize the harvest of Bristol Bay sockeye salmon.

SECTION V. STATEWIDE.

A. In the Subsistence Shellfish Fishery:

1. Allow the use of biodegradable pot lid tiedowns on subsistence shrimp pots as an alternative escape mechanism.

2. Provide a daily bag limit for subsistence taken king crab.

3. Allow the use of jigging gear in salt water at all times of the year for the subsistence taking of shellfish.

4. Allow a commercially licensed fishing vessel not registered for miscellaneous shellfish to have aboard subsistence taken miscellaneous shellfish and gear for taking miscellaneous shellfish.

B. In the Commercial Shrimp Fishery:

1. Establish requirements for the use of a vessel to tender a shrimp fishing vessel.

C. In the Commercial Dungeness Crab Fishery:

1. Allow the use of a single escape ring in dungeness crab pots.

D. In the Commercial King Crab Fishery:

1. Repeal the inspection requirements for king crab vessels landing their catch in an area other than the one for which they are registered.

2. Allow storage of king crab pots in waters closed to king crab fishing for a specified time before the opening of those waters to the taking of king crab.

3. Define a king crab pot.

4. Require the reporting of king crab harvested, but lost, dumped overboard or not sold.

E. In the Commercial Tanner Crab Fishery:

1. Change the tanner crab vessel registration deadline for exclusive registration areas.

2. Allow the use of tanner crab pots on long lines.

3. Define a tanner crab pot.

F. In the General Provisions:

1. Require that operators of floating fish processing vessels report to a local representative of the department located within the area of intended operation prior to commencement of processing operations.

2. Prohibit the use of biodegradable pot lid tie downs on commercial dungeness crab pots and allow their use on commercial shrimp pots as an alternative escape mechanism.

3. Adopt the 1980 halibut fishing regulations of the International Pacific Halibut Commission.

4. Provide that the regulations of the U.S. Secretary of Commerce governing the taking of groundfish in the Gulf of Alaska also apply in state waters.

5. Define "waters of Alaska" and "escapement goals or needs."

G. In the Protection of Critical Fish Habitat Areas.

1. Provide that the commissioner or his authorized designee may require individuals and governmental agencies to submit full plans and obtain a permit for proposed land or water use or construction within waters or lands comprising fish critical habitat areas. Establish permit conditions necessary for the protection and maintenance of fish populations or habitat, provide for permit restrictions or revocation, monitoring of activities by the department, delegation of the commissioner's authority, mitigation procedures for rehabilitating damaged habitat, reporting requirements, and define terms necessary to implement these requirements.

SECTION VI. PETITIONS.

The Board of Fisheries will consider the following petitions submitted in accordance with Alaska Statute 44.62.220 which request the board to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code:

1. Prohibit or allow sport fishing from commercial fishing vessels licensed under AS 16.05.490 that are used to carry passengers for hire for the recreational or subsistence taking of fish and are also used to take salmon for commercial purposes with troll gear.

2. Establish the Kodiak and Chignik commercial herring fishing areas as exclusive registration areas, prohibit herring fishing vessels and gear that are registered for the Kodiak and Chignik areas from fishing for herring in any other herring fishing area, prohibit herring vessels and gear that are registered for another herring fishing area from fishing for herring in the Kodiak and Chignik areas and establish a deadline for registering herring vessels and gear for the Kodiak and Chignik areas.

Copies of proposed changes in regulations summarized in this notice may be inspected at any Department of Fish and Game office or may be obtained upon request by writing to the Board of Fisheries, Subport Building, Juneau, Alaska 99801.

Notice is also given that any persons interested may present oral or written statements or arguments relevant to the action proposed in this notice. Written comments should be mailed so as to be received by the Board of Fisheries, Subport Building, Juneau, Alaska 99801, before 4:30 p.m. on March 14, 1980. Written comments may also be submitted to the Board of Fisheries at any time prior to the close of a public hearing to be held at the Anchorage-Westward Hilton Hotel, Anchorage, Alaska. Oral testimony may be given at the public hearing which will commence at 10:00 p.m. March 25, 1980, and continue until all persons have been given the opportunity to be heard. Additional public hearings may be held throughout the meeting just prior to the consideration and adoption of proposed changes in the regulations of the various regulatory areas. An agenda will be posted daily during the meeting.

All persons interested in or affected by commercial, sport and subsistence fishing and habitat protection regulations are hereby informed that, by publishing this legal notice, the Board of Fisheries may consider all of the subjects covered by the proposed changes contained in this notice; the Board is not limited by the specific language or confines of the actual regulatory proposals submitted by the public or the staff. Unless otherwise specified, references to such topics as areas, seasons, species, gear and guideline harvest levels apply to all or portions of the specific topic. On its own motion, after public hearing, the Board may adopt, amend, reject, supplement, or take no action on these matters. The Board may adopt regulations that fall within the range of existing regulations and the proposals summarized in this legal notice. In addition, the Board may adopt other regulations necessary to implement, administer, or enforce the regulations adopted by the Boards. All persons interested in or affected by the subject matter contained in this legal notice should make written or oral comments if they wish to have their views considered by the Board.

DATE: 15 Feb 80

Ronald O. Skoog

Ronald O. Skoog, Secretary
Alaska Board of Fisheries

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.100 is amended to read:

5 AAC 30.100. DESCRIPTION OF AREA. The Yakutat area includes all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 30.200(a) and (b) are amended to read:

5 AAC 30.200. FISHING DISTRICTS. (a) Yakataga district: all waters of Alaska between the longitude of Cape Suckling (143°53' W. long.) and the longitude of Icy Cape (141°42' W. long.).

(b) Yakutat district: all waters of Alaska between the longitude of Icy Cape (141°42' W. long.) and a line projected southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 30.331(a)(1)(C) and (F), (a)(2)(A) and (b) are amended to read:

5 AAC 30.331. GILL NET SPECIFICATIONS AND OPERATION. (a) Set gill nets with mesh size smaller than eight inches may not be deepr than 45 meshes and set gill nets with mesh size eight inches or larger may not be deeper than 35 meshes. The individual and aggregate lengths of any and all set gill nets aboard a vessel or in use by a person may not be more than one of the following hung measure:

(1) in the Yakutat district

(C) Yahtze River, Yana River and Malaspina Lake drainage, one net not to exceed 25 fathoms;

(F) East River, one net not to exceed 20 fathoms, except that after the third Monday in August two nets not to exceed 20 fathoms each and an aggregate length not to exceed 40 fathoms;

(2) in the Yakataga district

(A) Tsiu River; one net not to exceed 15 fathoms;

(b) Set gill nets may not obstruct more than two thirds of any salmon migratory waterway; except in the Tsiu River where set gill nets may not obstruct more than one half of the waterway. In the intertidal zone this applies at all stages of the tide.

Authority: AS 16.05.251(a)(4),(5)

5 AAC 30.335 is amended to read:

5 AAC 30.335. MINIMUM DISTANCE BETWEEN UNITS OF GEAR. No part of a set gill net may be set or operated within 100 yards of any part of another set gill net, except that in the Tsiu River, no part of a set gill net may be set or operated within 75 yards of any part of another set gill net.

Authority: AS 16.05.251(a)(4)

5 AAC 30.340 is added to read:

5 AAC 30.340. GILL NET OPERATION IN SUFFLINE AREAS. The provisions of secs. 310, 320, 331 and 335 of this chapter as applied to each river fishery also apply to the area within a radius of one-half mile from the terminus of that river.

Authority: AS 16.05.251(a)(2)

5 AAC 30.350(a) is amended to read:

5 AAC 30.350. CLOSED WATERS. (a) Salmon may not be taken in the following waters:

(1) Alsek River: upstream starting at three miles below the southern end of "basin";

(2) Situk River: upstream from the Department of Fish and Game regulatory marker one-half mile west of the tip of Strawberry Point to the cut bank on the eastern side of the mouth of Johnson Slough;

(3) Ankau Inlet: inside of a line from 59°32'51" N. lat., 139° 49'42" W. long., to 59°32'47" W. lat., 139°49'42" W. long.

(4) Italio River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles from the terminus of the river;

(5) East River: upstream from the Department of Fish and Game regulatory markers located four miles upstream from the terminus of the river;

(6) Akwe River: upstream from the Department of Fish and Game regulatory markers located six and one-half miles upstream from the terminus of the river;

(7) Lost River: upstream from Department of Fish and Game regulatory markers located 500 yards upstream from the most downstream tree line on the west bank at the terminus of the river;

(8) Old Village Lagoon: upstream from the road.

Authority: AS 16.05.060
AS 16.05.251(a)(2)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.200(f)(1)(2) and (3),(m),(n) and (o) are amended and (f)(4) is added to read:

5 AAC 33.200. FISHING DISTRICTS AND SECTIONS.

(f) unchanged

(1) section 6-A: waters north of a line from the tip of Point Colpoys to the tip of Macnamara Point, west of a line from the tip of Low Point to the tip of Point Alexander and east of a line from the tip of Point Barne to the tip of Point Baker;

(2) section 6-B: waters south of a line from the tip of Point Colpoys to the tip of Macnamara Point, north and west of a line from the tip of Luck Point to the tip of Point Stanhope to Lincoln Rock light to Key Reef light to Nesbitt Reef light to the tip of Point Nesbitt;

(3) section 6-C: waters enclosed by a line from Lincoln Rock light to the westernmost point of Screen Islands to the westernmost point of March Island to the westernmost point of Steamer Rocks to Mariposa Rock Buoy to the tip of Point Nesbitt to Nesbitt Reef light to Key Reef light to Lincoln Rock light;

(4) section 6-D: all other waters of the district.

(m) District 13: all waters north of a line projecting southwest from the southernmost tip of Cape Ommany, south of a line projecting west from the southernmost tip of Cape Spencer, west of a line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island, south of a line from the northernmost tip of Soapstone Point to the westernmost tip of Column Point and west of a line from the southernmost tip of Point Hayes to the northernmost point of Point Thatcher.

(n) District 14: all waters of Icy Strait west of a line from the southernmost tip of Point Couverden to Point Augusta light, east of a straight line from the southernmost tip of Cape Spencer through Yakobi Rock to Yakobi Island and north of a line from the northern most point of Soapstone Point to the westernmost point of Column Point.

(p) District 16: all waters north of a line projecting west from the southernmost tip of Cape Spencer and south of a line projecting southwest from the westernmost tip of Cape Fairweather.

Authority: AS 16.05.251(a)(2)

5 AAC 33.310(b)(1)(A)(iv), b)(2) and (c)(5)(B) are amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) unchanged:

(1) unchanged:

(A) unchanged:

(iv) district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia;

(2) during the period April 16 through September 20, salmon may be taken by power troll gear in that portion of district 12 north of the latitude of the northernmost tip of Point Hepburn, district 14, except during the period April 16 to August 1 for that portion of the district south of a line from the southernmost tip of Cape Spencer to the northernmost tip of Point Lavinia, section 15-A and 15-C only during the fishing periods set forth in (b)(1) (B) of this section;

(c) unchanged:

(5) district 15

(B) section 15-C opens by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.350(b)(3)(8)(14)(15)(16)(17)(18)(20)(22)(28), (c)(1)(2)(B), (d)(1)(3)(5)(7)(9)(10)(21)(25)(26)(28)(29), (f)(2)(C), (f)(3)(A)(C), (f)(7)(8)(9)(10), (g)(1)(4)(8)(9)(11)(13)(15)(16), (h)(1)(2)(3)(4)(6)(7)(8)(11), (i)(1), (j)(1)(C), (j)(7)(9)(10)(14)(15), (k)(3)(7), (l)(1)(2)(3)(4)(5), (l)(6)(B)(C), (m)(1)(4)(5)(7)(8)(9)(11)(13)(14)(15), (n)(1)(2)(3)(4)(5)(7)(8)(9)(10)(13)(14)(15)(16)(17)(18)(19)(20)(21)(22)(23)(24)(25)(26), (o)(2)(3)(7)(9) and (p)(3)(4) are amended to read:

5 AAC 33.350. CLOSED WATERS.

(b) District 1

(3) Hidden Inlet: north of the latitude of the tip of Hidden Point;

(8) Very Inlet: inside of a line from 54°57'44" N. lat., 130° 57'36" W. long. to 54°57'44" N. lat., 130°57'00" W. long.;

(14) Traitors Cove: east of 131°41'48" W. long.;

(15) Naha Bay: east of 131°38'18" W. long;

(16) Moser Bay: south of a line from the tip of Cod Point to 55° 34'00" N. lat., 131°40'54" W. long.;

(17) Port Stewart: west of a line from 55°43'06" N. lat., 131° 49'17" W. long. to 55°41'33" N. lat., 131°50'05" W. long.;

(18) Helm Bay: west of a line from the tip of Helm Point to 55° 34'54" N. lat., 131°56'57" W. long.;

(20) Vallendar Bay: south of a line from 55°23'45" N. lat., 131° 50'52" W. long. to 55°22'55" N. lat., 131°52'58" W. long.;

(22) Ward Cove: east of a line from 55°23'56" N. lat., 131°44' 27" W. long. to 55°23'38" N. lat., 131°44'01" W. long.;

(28) Ray Anchorage: all waters inside a line between 54°56'39" N. lat., 131°13'54" W. long. and 54°55'42" N. lat., 131°12'54" W. long.;

(c) District 2

(1) Nichols Bay: north of 54°42'07" N. lat.;

(2) Moira Sound

(B) Johnson Cove: south of 54°59'43" N. lat.;

(d) District 3

(1) Hunter Bay: east of a line from the tip of Turn Point to 54°52'48" N. lat., 132°21'20" W. long.;

(3) Keete Inlet: east of the longitude of the tip of Keete Point;

(5) Hetta Harbor: east of the longitude of the tip of Hetta Point;

(7) Eek Inlet: west of a line from 55°08'48" N. lat., 132°39' 25" W. long. to 55°08'53" N. lat., 132°39'23" W. long.;

(9) Ham Cove: south of 54°53'00" N. lat.;

(10) Kasook Inlet: north of 55°01'40" N. lat.

(21) Salt Lake Bay: east of 133°23'22" W. long.

(25) Edna Bay: north of a line from Limestone Point light to 55°55'55" N. lat., 133°37'40" W. long.;

(26) Tokeen Bay: east of a line from the tip of Holbrook Point to 55°59'52" N. lat., 133°27'51" W. long.;

(28) Devilfish Bay: west of 133°20' W. long.;

(29) Hessa Inlet: east of the longitude of the tip of Whirlpool Point;

(f) District 5

(2) Port Beauclerc

(C) The cove 0.7 miles west of the northern tip of Edwards Island between 56°18'20" N. lat., 133°58'30" W. long., and 56°19'15" N. lat., 133°58'20" W. long.;

(3) Affleck Canal

(A) Bear Harbor: north of a line from 56°13'25" N. lat., 134°05'45" W. long., to 56°13'50" N. lat., 134°05'05" W. long.;

(C) north of 56°16'20" W. long.;

(7) Hole in the Wall, northwest coast of Prince of Wales Island: east of 133°38'30" W. long.;

(8) Alvin Bay: west of 133°53'25" W. long.;

(9) Reid Bay: west of 133°53'55" W. long.;

(10) Barrie (Kushehin) Creek: east of a line from 56°27'50" N. lat., 133°40'05" W. long., to Trouble Island at 56°28'45" W. lat., 133°40'45" W. long. to 56°28'00" N. lat., 133°39'55" W. long.;

(g) District 6

(1) Salmon Bay: within a line extending from 56°17'24" N. lat., 133°08'14" W. long., to Rookery Island to 56°19'06" N. lat., 133°09'42" W. long.;

(4) Ratz Harbor: south and west of a line from 55°53'08" N. lat., 132°35'37" W. long., to 55°53'16" N. lat., 132°35'47" W. long.;

(8) Rocky Bay, west coast of Etolin Island: north of a line from 56°04'20" N. lat., 132°36'30" W. long., to 56°04'24" N. lat., 132°36'03" W. long.;

(9) Mosman Inlet: north of 56°05'20" N. lat.;

(11) Exchange Cove: south of a line from 56°13'07" N. lat., 133°03'42" W. long., to 56°12'54" N. lat., 133°03'25" W. long;

(13) Kah Sheets Bay: west of a line from 56°31'28" N. lat., 133°05'12" W. long., to 56°29'46" N. lat., 133°07'12" W. long.;

(15) Wrangell Narrows: all waters north of the tip of Point Alexander except by trolling;

(A) Blind Slough: east of a line from the tip of Anchor Point to Coast Guard light #25 to Coast Guard light #27 to a point 200 yards due north of the tip of Blind Point;

(B) Petersburg Creek: west of a line from 56°48'15" N. lat., 132°59'33" W. long., to Coast Guard light #56 to Coast Guard light #58 to the tip of Bayou Point;

(16) Navy Creek: east of a line from 56°03'30" N. lat., 132°27'54" W. long., to the southwest tip of South Burnett Island and east of a line from the northern tip of South Burnett Island to the southern tip of North Burnett Island and east of a line from the northern tip of North Burnett Island to 56°04'36" N. lat., 132°27'29" W. long.

(h) District 7

(1) Anita Bay: west of a line from the tip of Anita Point to 56° 15'18" N. lat., 132°22'56" W. long., except by trolling;

(2) Olive Cove: south of a line from 56°11'33" N. lat., 132°19' 06" W. long. to 56°11'24" N. lat., 132°18'43" W. long.;

(3) Thom's Place, Zimovia Strait: north of 56°09'38" N. lat.;

(4) Fool's Inlet: north of 56°12'30" N. lat.;

(6) Blake Channel and eastern Passage: north of 56°12'00" N. lat., and east of a line from the tip of Babbler Point to 56°27'48" N. lat., 132° 16'38" W. long., on Hour Point except by trolling which is closed from April 16 through September 30;

(7) Vixen Inlet: east of the longitude of the westernmost tip of Sunshine Island;

(8) Santa Anna Inlet: south of the latitude of the tip of Point Santa Anna;

(11) Union Bay: south of a line from 55°44'48" N. lat., 132°14' 07" W. long. to 55°45'34" N. lat., 132°11'08" W. long.;

(i) District 8

(1) Blind Slough: north of a line from 56°30'45" N. lat., 132°43' 18" W. long., to 56°31'55" N. lat., 132°40'32" W. long.;

(j) District 9

(1) Tebenkof Bay

(C) Thetis Bay: south of 56°23'22" N. lat.;

(7) Port Walter and Little Port Walter: west of a line from 56°23'15" N. lat., 134°38'05" W. long. to 56°23'42" N. lat., 134°38'15" W. long.;

(9) Eliza Harbor: north of 57°14'18" N. lat.;

(10) Kadake Bay: south of a line from 56°48'45" N. lat., 133°58' 00" W. long. to 56°48'23" N. lat., 133°56'28" W. long.;

(14) Deep Cove: west of 134°43'38" W. long.;

(15) Patterson Bay: north of 56°36'44" N. lat.

(k) District 10

(3) Farragut Bay: Francis Anchorage north of 57°08'45" N. lat.;

(7) Dry Bay: inside of a line from 57°03'32" N. lat., 133°01'55" W. long., to 57°02'49" N. lat., 133°01'45" W. long., to 57°02'57" N. lat., 133°00'10" W. long.

(l) District 11

(1) Auke Bay: inside a line from the tip of Point Louisa to the tip of Outer Point;

(2) Taku Inlet: north of a line from the Annex Creek Power House to a point at 58°17'30" N. lat., 134°01'00" W. long.;

(3) Slocum Inlet: all waters east of a line from 58°08'21" N. lat., 134°04'14" W. long., to 58°07'49" N. lat., 134°04'24" W. long.;

(4) Taku Harbor: all waters east of a line from the tip of Stokade Point to 58°03'41" N. lat., 134°01'59" W. long.;

(5) Limestone Inlet: all waters east of a line from 58°01'48" N. lat., 133°59'16" W. long., to 58°02'04" N. lat., 133°59'40" W. long.

(6) Seymour Canal

(B) Mole Harbor: inside a line from the tip of Flaw Point to a point at 57°39'40" N. lat., 134°01'30" W. long.;

(C) Pleasant Bay: all waters inside a line from 57°38'50" N. lat., 133°59'42" W. long. to a point at 57°38'28" N. lat., 133° 57'25" W. long.;

(m) District 12

(1) Wilson Cove: all waters east of the longitude of Point Wilson;

(4) Hood Bay: all waters east of 134°24'30" W. long. except by trolling;

(5) Kootznahoo Inlet: all waters east of a line from the tip of Turn Point to Village Rock light except by trolling;

(7) Funter Bay: all waters inside the longitude of the tip of Clear Point, except by trolling;

(8) Howard Bay: all waters inside the latitude of the tip of Point Howard, except by trolling;

(9) Freshwater Bay: all waters inside a line from a point at 57°53'20" N. lat., 135°07'35" W. long., to 57°54'45" N. lat., 135°06'00" W. long.;

(11) Basket Bay: all waters inside a line from 57°39'50" N. lat., 134°53'12" W. long., to 57°39'17" N. lat., 134°53'53" W. long.;

(13) Warm Springs Bay: west of 134°46'38" W. long.;

(14) False Bay: west of a line from 57°58'33" N. lat., 134°55' 05" W. long., to 57°57'00" N. lat., 134°55'23" W. long.;

(15) Wukuklook Creek: west of a line from a point at 57°05'15" N. lat., 135°55'30" W. long., to Flinks Point at 57°52'30" N. lat., 135°57'20" W. long.;

(n) District 13

(1) Lisianski Inlet: south of a line from 57°56'46" N. lat., 136°14'10" W. long.; to 57°57'15" N. lat., 136°12'53" W. long. except by trolling;

(2) Salt Lake Lagoon, Takanis Bay: north and east of a line from 57°55'05" N. lat., 136°30'22" W. long., to 57°55'25" N. lat., 136°31'00" W. long.;

(3) Stag Bay: east of 136°21'25" W. long.;

(4) Goulding Harbor: north of a line from 57°46'18" N. lat., 136°15'05" W. long., to 57°46'22" N. lat., 136°15'27" W. long.;

(5) Black Bay: north and east of a line from 57°42'37" N. lat., 136°09'20" W. long., to 57°42'23" N. lat., 136°09'10" W. long.;

(7) Waterfall Cove, Slocum Arm: north and east of a line from 57° 37'18" N. lat., 135°56'10" W. long., to 57°30'53" N. lat., 135°55'00" W. long.;

(8) Fish Bay: east of 135°35'10" W. long.;

(9) Hoonah Sound: west and north of a line from 57°44'12" N. lat., 135°43'40" W. long., to 57°43'45" N. lat., 135°44'40" W. long.;

(10) Ushk Bay: west of 135°35'00" W. long.;

(13) Hanus Bay: south of a line from 57°25'29" N. lat., 134°59' 00" W. long., to 57°25'18" N. lat., 135°03'40" W. long.;

(14) Nakwasina Passage: north and east of a line from 57°14'12" N. lat., 135°29'55" W. long., to 57°14'53" N. lat., 135°30'28" W. long.;

(15) Nakwasina Sound: north and east of a line from 57°11'42" N. lat., 135°23'30" W. long., to 57°12'12" N. lat., 135°22'40" W. long.;

(16) Katlian Bay: north and east of a line from 57°09'30" N. lat., 135°22'35" W. long., to 57°09'07" N. lat., 135°21'55" W. long.

(17) Redoubt Bay: east of 135°18'53" W. long.;

(18) Port Banks: south and east of a line from 56°36'07" N. lat. 135°00'20" W. long., to 56°35'55" N. lat., 135°01'10" W. long.;

(19) Still Harbor: south and east of a line from 56°33'15" N. lat., 135°02'40" W. long., to 56°33'38" N. lat., 135°02'25" W. long.;

(20) Redfish Bay: north and west of a line from 56°20'41" N. lat., 134°51'31" W. long., to 56°20'49" N. lat., 134°51'05" W. long.;

(21) Big Branch Bay: north and east of a line from 56°19'27" N. lat., 134°50'30" W. long., to 56°19'18" N. lat., 134°50'08" W. long.;

(22) Sitkoh Bay: west of a line from 57°29'17" N. lat., 134°53'25" W. long., to 57°29'36" N. lat., 134°53'58" W. long.;

(23) Patterson Bay: west of a line from 57°40'23" N. lat., 135° 42'42" W. long., to 57°39'35" N. lat., 135°42'18" W. long.;

(24) Fick Cove: south and west of a line from 57°37'51" N. lat., 135°39'38" W. long., to 57°38'25" N. lat., 135°40'39" W. long.;

(25) Starrigavan Bay: all waters east of a line from 57°07'47" N lat., 135°22'45" W. long., to the ferry terminal dock at 57°08'25" N. lat., 135°22'30" W. long.;

(26) Deep Bay: west of a line from 57°39'35" N. lat., 135°37'20" W. long., to 57°26'32" N. lat., 135°37'46" W. long.

(o) District 14

(2) Port Althorp: within a line from the tip of Point Lucan to a point at 57° 09'40" N. lat., 135°19'30" W. long., except by trolling;

(3) Idaho Inlet: south of the latitude of the tip of Gull Point, except by trolling;

(7) Whitestone Harbor: within a line from 58°04'15" N. lat., 135° 04'36" W. long., to 58°03'36" N. lat., 135°04'15" W. long., except by trolling;

(9) Excursion Inlet: north of a line from 58°22'36" N. lat., 135° 28'30" W. long., to 58°22'36" N. lat., 135°28'18" W. long., except by trolling;

(p) District 15

(3) Taiya Inlet: all waters north of the latitude of the tip of Taiya Point, except by trolling;

(4) St. James Bay: all waters north of a line from the tip of Point Whidby to St. James Point at 58°33'45" N. lat., 135°09'45" W. long., except by trolling.

Authority: AS 16.05.060
AS 16.05.25](a)(2),(4)

5 AAC 33.360 is added to read:

5 AAC 33.360. DISTRICT ONE AND SIX PINK SALMON MANAGEMENT PLAN. In districts 1 and 6, when a purse seine fishery is harvesting pink salmon stocks subject to concurrent fishing by drift gill nets; for each day or portion of a day the purse seine fishery is open, the corresponding gill net fishery shall be open a full 24 hours.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(4)

5 AAC 33.392 is amended to read:

5 AAC 33.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the mid-point of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this paragraph.

Authority: AS 16.05.251(a)(3),(4),(7)

5 AAC 33.393 is amended to read:

5 AAC 33.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho by troll gear.

Authority: AS 16.05.251(a)(3),(4),(7)

5 AAC 33.410(a)(1) and (2) are amended to read:

5 AAC 33.410. FISHING SEASONS. (a) Sablefish may be taken only as follows:

(1) in the northern area which includes district 9 north and east of a line from the southernmost tip of Cape Ommaney to the northernmost tip of Nation Point, district 10, 11, 12, section 13-C, districts 14 and 15, from September 1 through November 15 or until the area is closed by emergency order;

(2) in the southern area which includes districts 1, 2, 3, 5, 6, 7, and 8, from June 15 through November 15 or until the area is closed by emergency order.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3)

5 AAC 33.415(a) and (b) are added to read:

5 AAC 33.415. GUIDELINE HARVEST LEVELS. (a) In the northern area as described in sec. 410(a)(1) of this chapter, the guideline harvest range for sable fish is 500,000 to 900,000 pounds (227 to 408 m.t.).

(b) in the southern area as described in sec. 410(a)(2) of this chapter, the guideline harvest range for sablefish is 125,000 to 500,000 pounds (57 to 227 m.t.).

Authority: AS 16.05.251(a)(2),(3)

5 AAC 33.420(a),(b) and (c) are added to read:

5 AAC 33.420. REGISTRATION. (a) Operators of fishing vessels intending to fish for sablefish in the northern area as described in sec. 410(a)(1) of this chapter shall notify a local representative of the department by phone, radio or in person within 72 hours before starting fishing operations in the area.

(b) Within 24 hours after leaving the northern area, operators of sablefish fishing vessels shall notify a local representative of the department by phone, radio or in person.

(c) A vessel operator reporting as required by (a) and (b) of this section shall also report the amount of sablefish on board the vessel at the time of reporting.

Authority: AS 16.05.251(a)(2).(4),(7),(12)

Authority: AS 16.05.251(a)
AS 16.05.475
AS 16.05.905
AS 16.05.910
AS 16.05.920
AS 16.05.940

5 AAC 39.250(c) is amended and (d) is added to read:

5 AAC 39.250. GILL NET SPECIFICATIONS AND OPERATION.

(c) Gill net web may not contain no less than 30 filaments.

(d) The float line and floats of gill nets must be floating on the surface of the water while the net is fishing, unless natural conditions cause the net to temporarily sink. The restriction of this subsection does not apply in Kotzebue-Northern area (5 AAC 03.100), Norton Sound-Port Clarence area (5 AAC 04.100), Yukon area (5 AAC 05.100) and Kuskokwim area (5 AAC 07.100).

Authority: AS 16.05.251(a)(4)

5 AAC 39.270(c) and (d) are amended and (e) is added to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION.

(c) Each licensed power troll vessel must display its permanent vessel license plate number in permanent symbols of black on a white background. Each number must be at least twelve inches in height, with lines at least one inch in width and must be permanently affixed on both sides of the cabin or hull so as not to be obscured. The numbers must be displayed at all times until the end of the calendar year.

(d) Each licensed hand troll vessel must display the letters HT in permanent block letters. Each letter must be painted on both sides of the vessel hull or cabin in a color contrasting with the background, at least four inches in height, at least one-half inch in width, plainly visible and unobscured at all times. The letters must be displayed at all times until the end of the calendar year. No hand troll vessel may display its permanent vessel plate number (ADF&G number) in any location other than on the vessel license plate.

(e) No more than six troll gurdies may be mounted on board any salmon troll vessel. A troll gurdy is a spool type device around which a troll line can be wrapped.

Authority: AS 16.05.251(a)(4),(5),(7)

TITLE 5. FISH AND GAME.

PART I. COMMERCIAL AND SUBSISTENCE FISHING AND PRIVATE NONPROFIT SALMON HATCHERIES.

CHAPTER 21.
COOK INLET AREA.

5 AAC 21.430(a) is amended to read:

5 AAC 21.430. GEAR. (a) Bottomfish may be taken in all districts only by trawls, longlines and mechanical jigging machines.

Authority: AS 16.05.251(a)(4),(7), (12)

CHAPTER 30.
YAKUTAT AREA.

5 AAC 30.392 is amended to read:

5 AAC 30.392. SIZE LIMIT AND LANDING OF KING SALMON. King salmon taken must measure at least 28 inches from tip of snout to tip of tail (in its natural open position) or 23 inches from the midpoint of the clethral arch to the tip of the tail. The heads of all king salmon must remain attached to the fish until sold. Undersized fish which are taken must be returned to the water without injury. The size limit restrictions in this section do not apply to gill net and purse seine fishing. No king salmon may be mutilated or otherwise disfigured in any manner which prevents determining the minimum size set forth in this section.

Authority: AS 16.05.251(a)(3),(4), (7)

5 AAC 30.393 is amended to read:

5 AAC 30.393. LANDING OF COHO SALMON. The heads of all coho salmon must remain attached to the fish until sold. No troll vessel may be used to take or attempt to take salmon when coho salmon are aboard in an area closed to the taking of coho salmon by troll gear.

Authority: AS 16.05.251(a)(3),(4), (7)

CHAPTER 33.
SOUTHEASTERN ALASKA AREA.

5 AAC 33.310(b)(1)(B) is amended to read:

5 AAC 33.310. FISHING SEASONS AND WEEKLY FISHING PERIODS.

(b) Salmon may be taken by hand troll and power troll gear from January 1 through December 31 in all districts except as provided in sec. 350 of this chapter and except as follows:

(1) during the period April 16 through September 20 salmon may be taken by hand troll gear:

(B) April 16 through April 21
April 28 through May 5
May 12 through May 19
May 26 through June 2
June 9 through June 16
June 23 through June 30
July 7 through July 14
July 21 through July 28
August 4 through August 11
August 18 through August 25
September 1 through September 8
September 15 through September 20

Authority: AS 16.05.060
AS 16.05.251(a)(2),(4)

5 AAC 33.365 is adopted to read:

5 AAC 33.365. SOUTHEASTERN ALASKA-YAKUTAT CHINOOK AND COHO SALMON TROLL FISHERIES MANAGEMENT PLAN. (a) The management of the Southeastern Alaska and Yakutat areas chinook and coho salmon troll fisheries is complex because of mixing of the salmon stocks and fishing effort placed upon those salmon stocks by the subsistence, commercial and recreational user groups. The Board of Fisheries is concerned that some user groups, particularly those who traditionally fish the inshore and terminal salmon fishing areas as described in sec. 312(a)(1),(2) and (3) of this chapter, may be receiving reduced opportunities to take chinook and coho salmon because of increasing fishing effort by the salmon power troll fleet on mixed stocks of those species of salmon in the coastal and offshore salmon fishing areas as described in sec. 312(a)(4) and (5) of this chapter. The board is also concerned that continued increases in fishing effort on mixed chinook and coho salmon stocks may result in overharvest of individual salmon stocks or aggregations of those stocks, such that spawning escapement of those stocks to their natal streams may fall below that required to maintain a sustained yield of those stocks. Because of the above concerns, the board has adopted regulations that control the time, area of operation and efficiency of the salmon power and hand troll fisheries.

(b) The board recognizes that changes in size and timing of the chinook and coho salmon runs and changes in the distribution of fishing effort by the hand and power troll fleet may require inseason adjustments to salmon fishing seasons, periods and areas to allow chinook and coho salmon to escape the coastal and offshore fisheries and move into the inshore and terminal fishing areas. The department shall make inseason adjustments to salmon fishing seasons, periods and areas as follows:

(1) there may be no changes made to the chinook salmon fishing seasons, periods and areas during the period January 1 through June 14;

(2) there may be no changes made to the coho salmon fishing seasons, periods and areas during the period June 15 through July 9;

(3) about July 10 the department will evaluate the size and distribution of the coho salmon run and will close the Southeastern and Yakutat areas salmon troll fishery for 10 days, unless the department determines that the coho salmon run is larger than the last 10 year average and that acceptable numbers of coho salmon are moving into the inshore salmon fishing areas;

(4) following any July closure made in accordance with (3) of this subsection, the Southeastern Alaska and Yakutat salmon fishing areas will reopen for salmon hand and power troll fishing as provided for in the salmon hand and power troll fishing regulations contained in chaps. 30, 33 and 39 of this title;

(5) additional closures of the salmon hand and power troll fishing seasons, periods and areas may be required if the department determines that the strength of the coho salmon run in the inshore and terminal salmon fishing areas is less than required to provide a spawning escapement that will maintain the runs on a sustained yield basis.

Authority: AS 16.05.060
AS 16.05.251(a)(2),(3),(11)

CHAPTER 39.
GENERAL PROVISIONS.

5 AAC 39.120(g) is added to read:

5 AAC 39.120. REGISTRATION OF COMMERCIAL FISHING VESSELS.

(g) Registration requirements for salmon troll fishing vessels are as follows:

(1) the owner or operator of any fishing vessel that is to be used to take salmon with hand or power troll gear shall register that vessel with the department;

(2) no fishing vessel may be registered as both a hand troll and a power troll vessel;

(3) registration is accomplished by completing a form provided by the department and returning that form to a department office;

(4) any vessel that is to be used as a salmon troll fishing vessel must be registered before April 15 of each calendar year;

(5) this subsection becomes effective January 1, 1981.

Authority: AS 16.05.251(a)(2),(4),(5),(12)
AS 16.05.490
AS 16.05.510

5 AAC 39.270(a) is amended to read:

5 AAC 39.270. TROLL SPECIFICATIONS AND OPERATION. (a) The maximum number of trolling lines that may be operated from any salmon troll vessel is as follows:

(1) from power troll vessels: no more than four lines, except that no more than six lines may be operated in that portion of the Seaward Biological Influence Zone north of the latitude of the southernmost tip of Cape Spencer;

(2) from hand troll vessels

(A) using hand troll gurdies: no more than two lines to which multiple leaders and hooks may be attached;

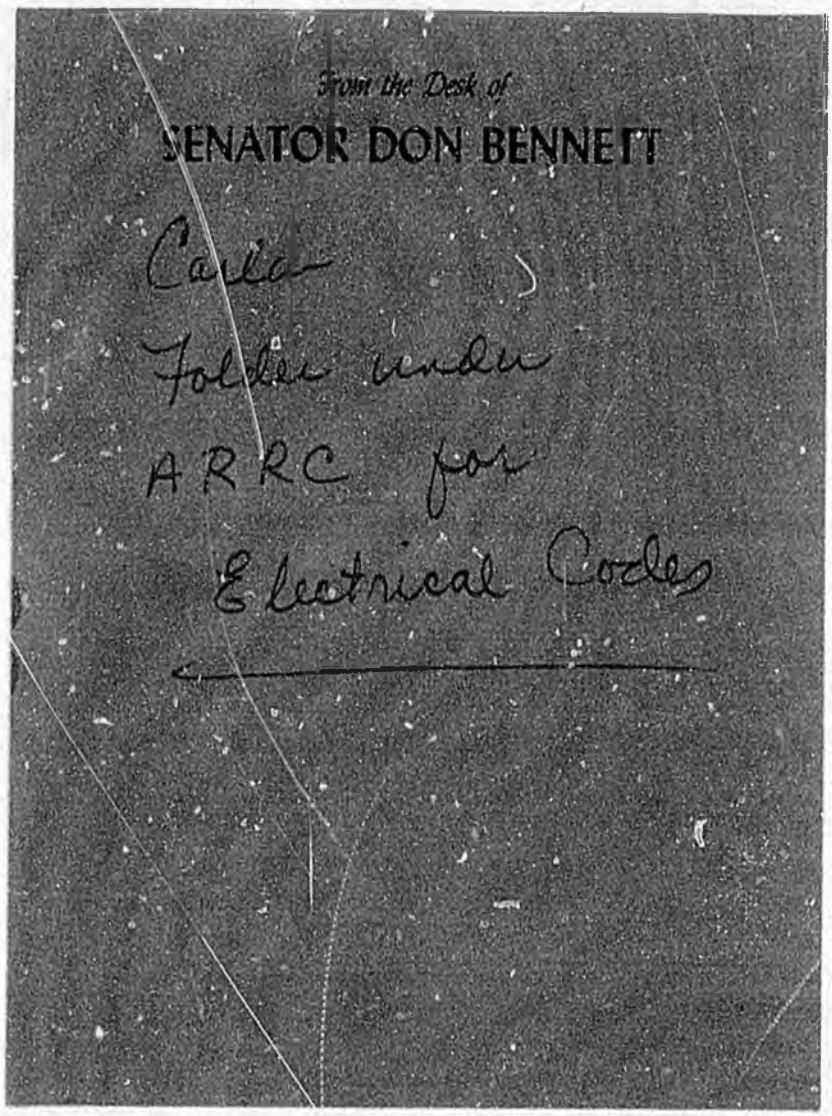
(B) using fishing rods: no more than four lines with no more than one leader and one lure or two baited hooks per leader;

(3) hand troll vessels may not concurrently use hand troll gurdies and fishing rods;

(4) for the purposes of this subsection, a fishing rod is a tapering often jointed rod equipped with a hand grip and line guides and upon which is mounted a hand powered reel used to deploy and retrieve the trolling line and a hand troll gurdy is a troll gurdy powered by hand or hand crank that is not mounted on or used in conjunction with a fishing rod.

Authority: AS 16.05.251(a)(4),(5), (7)

ELECT.
CODES


From the Desk of
SENATOR DON BENNETT
Carla
Folder under
ARRC for
Electrical Codes

CITY OF FAIRBANKS

410 CUSHMAN ST.
FAIRBANKS, ALASKA 99701

PIONEER ♦ PROGRESS

FAIRBANKS, ALASKA
ALL AMERICA CITY

File
Elect
Code

March 14, 1980

Senator Donald A. Bennett
Alaska State Legislature
Administrative Regulation Review Committee
Pouch V (MS 3100)
Juneau, Alaska 99811

Re: State of Alaska proposed code changes

Dear Senator Bennett:

As Chairman of the Code Review Commission of the City of Fairbanks, I wish to register strong opposition to this effort on the part of the State of Alaska to dictate building and related code amendments to the City of Fairbanks. Through this Commission, Fairbanks has worked hard for many years to adopt a comprehensive set of codes that we feel will best meet the needs of Fairbanks.

Effective January 1, 1980, the City upgraded all the codes of long standing and substituted the 1979 Edition of the Uniform Fire Code for the old Fire Prevention Code. The attached Ordinances 3844 and 3852, As Amended, identify the code package currently being enforced by the City of Fairbanks. This code package was recommended because the Commission recognizes the importance of having the building and fire codes prepared by the same bodies, International Conference of Building Officials and The Western Fire Chiefs Association, whereby each code cross references the other as applicable and contradictions are minimized. Further, the Commission recognizes the vast amount of expertise afforded the code preparation and adoption process at the national level and appreciates the efforts of the various code groups representing the different sections of the United States and Canada to join forces in the preparation of a "model code" acceptable to all. With these things in mind, the "whereas" portions of Ordinance Number 3844 (attached) clearly establish the desire of the City of Fairbanks to benefit from the studies and recommendations of the national groups as supplemented by amendments addressing "problems unique to the Fairbanks area". The City Council accepted said Ordinance Number 3844 for First Reading on September 24, 1979 and duly passed it effective October 26, 1979.

We can develop several additional points to support our position and will gladly do so if necessary or desirable. On the other hand we see little the State's efforts will accomplish other than to expand the bureaucracy at the expense of a highly professional (primarily donated) local effort.

Again, we feel that our Commission, which by City Ordinance is required to be composed of six (6) licensed architects and engineers and a seventh

member who at present is a contractor of long standing in the City of Fairbanks (the undersigned), is highly qualified to perform and is in fact performing the duties assigned it by the Fairbanks Code of Ordinances and hope you will agree that the codes used in the various cities should be the responsibilty of the cities so long as the codes used are recognized codes properly amended to reflect the needs of each city, and that you, your committee, and all members of our Fairbanks delegation will support us in our efforts to regulate ourselves properly!

Sincerely,

Ted Manville, Chairman
Code Review Commission
City of Fairbanks

TM:nd

cc: All Members of the Administrative Regulation Review Committee
All Members of the Fairbanks Legislative Delegation
All Members of the Fairbanks Code Review Commission
W. C. Droz, Fairbanks City Manager

Enc: Copy of Fairbanks Ordinances 3844 and 3852, As Amended

Introduced By: Code Review Commission
First Reading: September 24, 1979

ORDINANCE NO. 3844

AN ORDINANCE REGULATING THE ERECTION, CONSTRUCTION, ENLARGEMENT, ALTERNATION, REPAIR, MOVING, REMOVAL, DEMOLITION, CONVERSION, OCCUPANCY, EQUIPMENT, USE, HEIGHT, AREA AND MAINTENANCE OF ALL BUILDINGS AND/OR STRUCTURES IN THE CITY OF FAIRBANKS; PROVIDING FOR THE ISSUANCE OF PERMITS AND COLLECTION OF FEES THEREFOR; PROVIDING PENALTIES FOR THE VIOLATION THEREOF; REPEALING CHAPTER 9 OF THE CITY OF FAIRBANKS CODE OF ORDINANCES AND ALL ORDINANCES AND PARTS OF ORDINANCES INCONSISTENT THEREWITH, AND SETTING AN EFFECTIVE DATE.

WHEREAS the City of Fairbanks desires to benefit from the changes and trends in methods and materials of construction developed by national study groups and professional laboratories, made available in the latest editions of the codes, and

WHEREAS the Code Review Commission of the City of Fairbanks has reviewed the additions to and revisions of codes now in effect in this jurisdiction and has also reviewed the provisions of certain new codes recommended for adoption by the Building Department and the Fire Department of the City of Fairbanks, and

WHEREAS the Code Review Commission recommends that the City Council now adopt these latest editions and new codes effective January 1, 1980, thereby providing a reasonable period of transition as well as sufficient time for the appropriate City Departments to prepare an ordinance amending and supplementing this ordinance by including carryover code amendments addressing problems unique to the Fairbanks area,

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. That Chapter 9, Fairbanks General Code is hereby repealed and reenacted as follows:

There is hereby adopted, by reference, the provisions of the following administrative and technical codes, three (3) copies of each which are on file in the office of the City Clerk of the City of Fairbanks, Alaska, being marked and designated as:

1. The Uniform Administrative Code, 1979 Edition, published by the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601;

Introduced By: Administration
Recommended By: Code Review Commission
First Reading: November 19, 1979

ORDINANCE NO. 3852, AS AMENDED

AN ORDINANCE TO AMEND THE FAIRBANKS GENERAL CODE OF ORDINANCES CHAPTER 9, AS ESTABLISHED BY ORDINANCE NO. 3844, BY ADDING THE FOLLOWING PROVISIONS, AND SETTING AN EFFECTIVE DATE.

WHEREAS, the Code Review Commission of the City of Fairbanks, Alaska, has recommended to the City Council that the latest editions of the codes be adopted with certain amendments to various codes; and

WHEREAS, the City Council did adopt the latest editions of the codes as set forth in Ordinance No. 3844; and

WHEREAS, the City Council has met with members of the Code Review Commission and discussed these certain amendments to the various codes; and

WHEREAS, the City Council now desires to accept the recommendations of the Code Review Commission,

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

Section 1. That the Fairbanks General Code of Ordinances Chapter 9, as established by Ordinance No. 3844, be amended by adding the following provisions.

ARTICLE I. UNIFORM ADMINISTRATIVE CODE, 1979 EDITION.

Section 9.101. Uniform Administrative Code - Adoption.
The Uniform Administrative Code, 1979 Edition, as published by the International Conference of Building Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.101.1 Uniform Administrative Code, 1979 Edition - Amendments.
The Uniform Administrative Code is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Section 304(d)(2) Investigation Fee. An investigation fee, in addition to the permit fee, [SHALL] may be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Tables Nos. 3-A through 3-F. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of either this code or the technical codes nor from any penalty prescribed by law.

2. Reinspection fee assessed under provisions of Section 305(h).....($15.00) $30.00 each

3. Inspections for which no fee is specifically indicated.....($15.00) $30.00 per hour (minimum charge - one-half hour)

4. Additional plan review required by changes, additions or revisions to approved plans.....($15.00) $30.00 per hour (minimum charge - one-half hour)

Table 3-E - Grading Permit Fees. Other Inspections and Fees:

1. Inspections outside of normal business hours.....($15.00) $45.00 per hour (minimum charge - two hours)

2. Reinspection fee assessed under provisions of Section 305(h).....($15.00) $30.00 each

3. Inspections for which no fee is specifically indicated.....($15.00) $30.00 per hour (minimum charge - one-half hour)

Table 3-F - Grading Plan Review Fees. Other Inspections and Fees: Additional plan review required by changes, additions or revisions to approved plans.....($15.00) $30.00 per hour (minimum charge - one-half hour)

ARTICLE II. UNIFORM BUILDING CODE, 1979 EDITION.

Section 9.201. Uniform Building Code - Adoption.
The Uniform Building Code, 1979 Edition, as published by the International Conference of Building Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.201.1. Uniform Building Code, 1979 Edition Amendments.
The Uniform Building Code is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Section 705. Light, Ventilation and Sanitation:

Amend the fourth paragraph as follows:

Every building or portion thereof where persons are employed shall be provided with at least one water closet. Separate facilities shall be provided for each sex when the number of employees exceeds four and both sexes are employed. Such toilet facilities shall be located either in such building or conveniently in a building adjacent thereto on the same property. Drinking and dining establish-

Section 9.401.1. Uniform Plumbing Code, 1979 Edition - Amendments. The Uniform Plumbing Code is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Part I. Administration. DELETE Part I in its entirety.

Section 315(f). Protection of Piping. No water, soil or waste pipe shall be installed or permitted outside of a building or in an exterior wall, unless where necessary, adequate provision is made to protect such pipe from freezing. Unless insulated to the satisfaction of the Administrative Authority, adequate provision is hereby determined to be a minimum of five (5) feet of earch cover.

Section 318(2)(f). Water Piping. Upon completion of a section or the entire hot and cold water supply system, it shall be tested and proved tight under a water pressure not less than the working pressure under which it is to be used. The water used for tests shall be obtained from a potable source of supply. A [FIFTY (50)] one hundred (100) pounds per square inch (344.5 kPa) air pressure test may be substituted for the water test. In either method of test, the piping shall withstand the test without leaking for a period of not less than fifteen (15) minutes.

Section 1002(d). Unlawful Connections. No water piping supplied by any private water supply system shall be connected to any other source of supply without the approval of the Administrative Authority, Health Department or other department having jurisdiction. Every abandoned private water supply system shall be plugged or capped in an approved manner.

Section 1004(a). Materials. Water pipe and fittings shall be of brass, copper, cast iron, galvanized steel, lead or other approved materials. (ASBESTOS CEMENT, PE, OR PVC WATER PIPE MANUFACTURED TO RECOGNIZED STANDARDS MAY BE USED FOR COLD WATER DISTRIBUTION SYSTEMS OUTSIDE A BUILDING.) All materials used in the water supply system, except valves and similar devices shall be of a like material, except where otherwise approved by the Administrative Authority.

Section 1007(e). Pressure Relief Valves. Relief valves located inside a building shall be provided with a full size drain of galvanized steel or hard-drawn copper piping and fittings and shall extend from the valve to the [OUTSIDE] inside of the building with the end of the pipe not more than two (2) feet (.6m) nor less than six (6) inches

Section 9.501.1. Uniform Housing Code, 1979 Edition - Amendments. (Reserved).

ARTICLE VI. UNIFORM CODE FOR THE ABATEMENT OF DANGEROUS BUILDINGS, 1979 EDITION.

Section 9.601. Uniform Code for the Abatement of Dangerous Buildings - Adoption. The Uniform Code for the Abatement of Dangerous Buildings, as published by the International Conference of Building Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.601.1. Uniform Code for the Abatement of Dangerous Buildings - Amendments. The Uniform Code for the Abatement of Dangerous Buildings, 1979 Edition, is hereby amended as follows by deleting that which is capitalized and bracketed and adding that which is underlined.

Section 301. For the purpose of this code, certain terms, phrases, words and their derivatives shall be construed as specified in either this chapter or as specified in the Building Code or the Housing Code. Where terms are not defined, they shall have their ordinary accepted meanings within the context with which they are used. "Webster's Third New International Dictionary of the English Language, Unabridged", copyright 1961, shall be construed as providing ordinary accepted meanings. Words used in the singular include the plural and the plural the singular. Words used in the masculine gender include the feminine and the feminine the masculine.

BUILDING CODE is The Uniform Building Code promulgated by the International Conference of Building Officials.

DANGEROUS BUILDING is any building or structure deemed to be dangerous under the provisions of Section 302 of this code.

HOUSING CODE is the Uniform Housing Code promulgated by the International Conference of Building Officials.

DIRECTOR OF PUBLIC WORKS is the Superintendent of Public Works wherever used in this code.

COUNTY is the Fairbanks North Star Borough wherever used in this Code.

Section 801(b). Costs. The Costs of such work shall be paid from the [REPAIR AND DEMOLITION] General Fund, and may be made a special assessment againt the property involved, or may be made a personal obligation of the property owner, whichever the legislative body of this jurisdiction shall determine appropriate.

Section 802. Repair and Demolition Fund. DELETE Section 802 in its entirety.

Section 908(b). Interest. All such assessments remaining unpaid after 30 days

The Uniform Solar Code, 1979 Edition, as published by the International Association of Plumbing and Mechanical Officials, was adopted by Ordinance No. 3844, on the 26th day of October, 1979, to be effective on January 1, 1980.

Section 9.1101.1. Uniform Solar Code, 1979 Edition - Amendments. (Reserved).

Section 2. All ordinances or parts of ordinances inconsistent herewith are hereby repealed.

Section 3. That the effective date of this Ordinance shall be the 29th day of December, 1979.

Wm R Wood

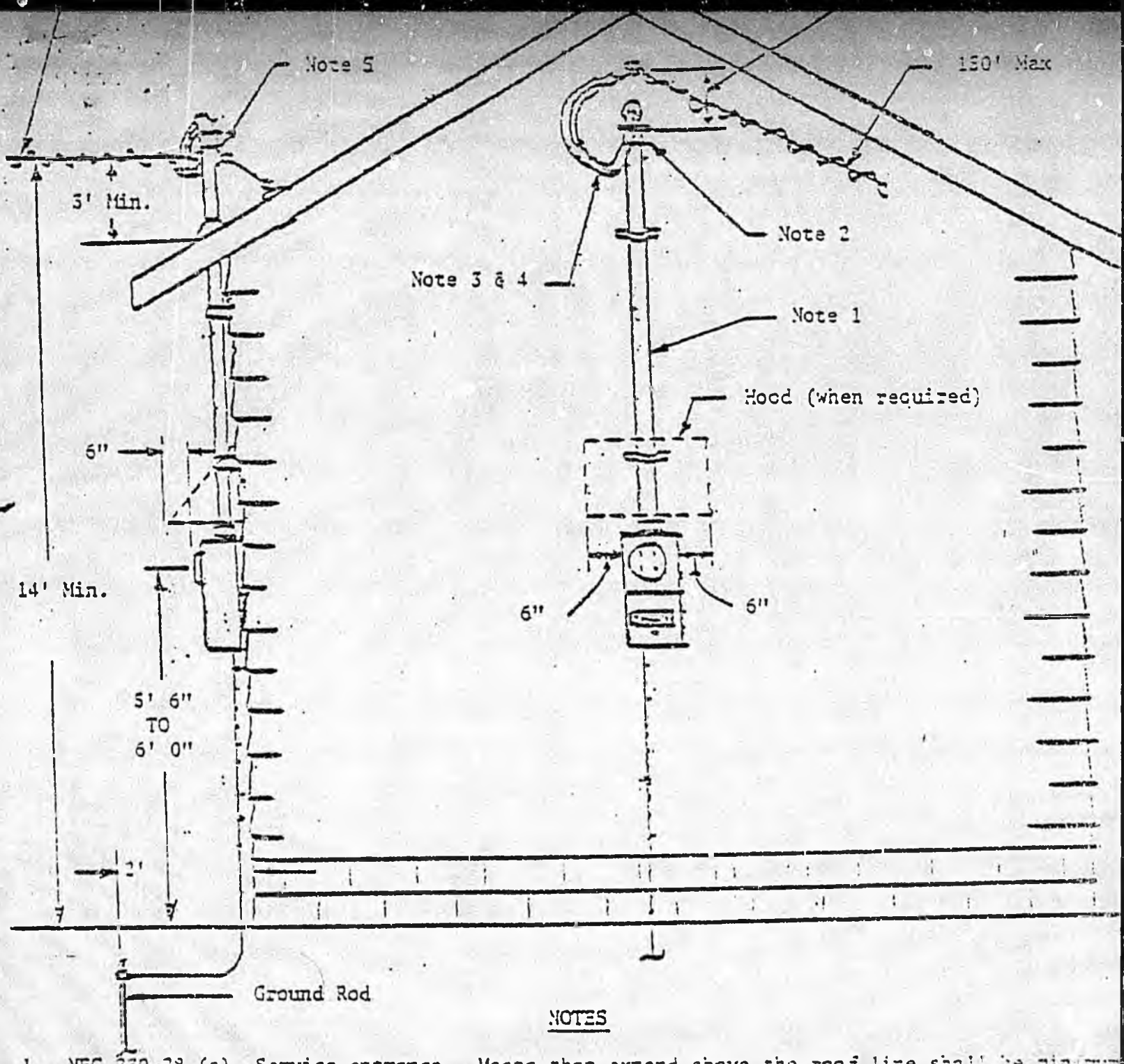
WILLIAM R. WOOD, Mayor

ADOPTED: December 26, 1979

ATTEST:

Kathleen I. Day

KATHLEEN I. DAY, City Clerk



NOTES

1. NEC 230-28 (a) Service entrance. Masts that extend above the roof line shall be minimum 2" rigid steel conduit, and shall be guyed using minimum 1/8" air craft cable, approved clamps and nutted 1/2" closed eye bolt.

2. NEC 230-24 (c) Conductors shall be above or at least 36" from any building opening. Building openings shall include vents.

3. NEC 230-40 (b) Individual service entrance conductors shall be insulated with vulcanizable material, TH & THW are not acceptable.

4. NEC 230-54 (h) Connections at service head, for 100 AMP service leave 18" tails, for 200 AMP service leave 24" tails, and strip neutral tails to the weatherhead.

5. NEC 230-28 (a) Communication lines shall not be connected to unguyed electrical masts, or other electrical service entrance equipment.

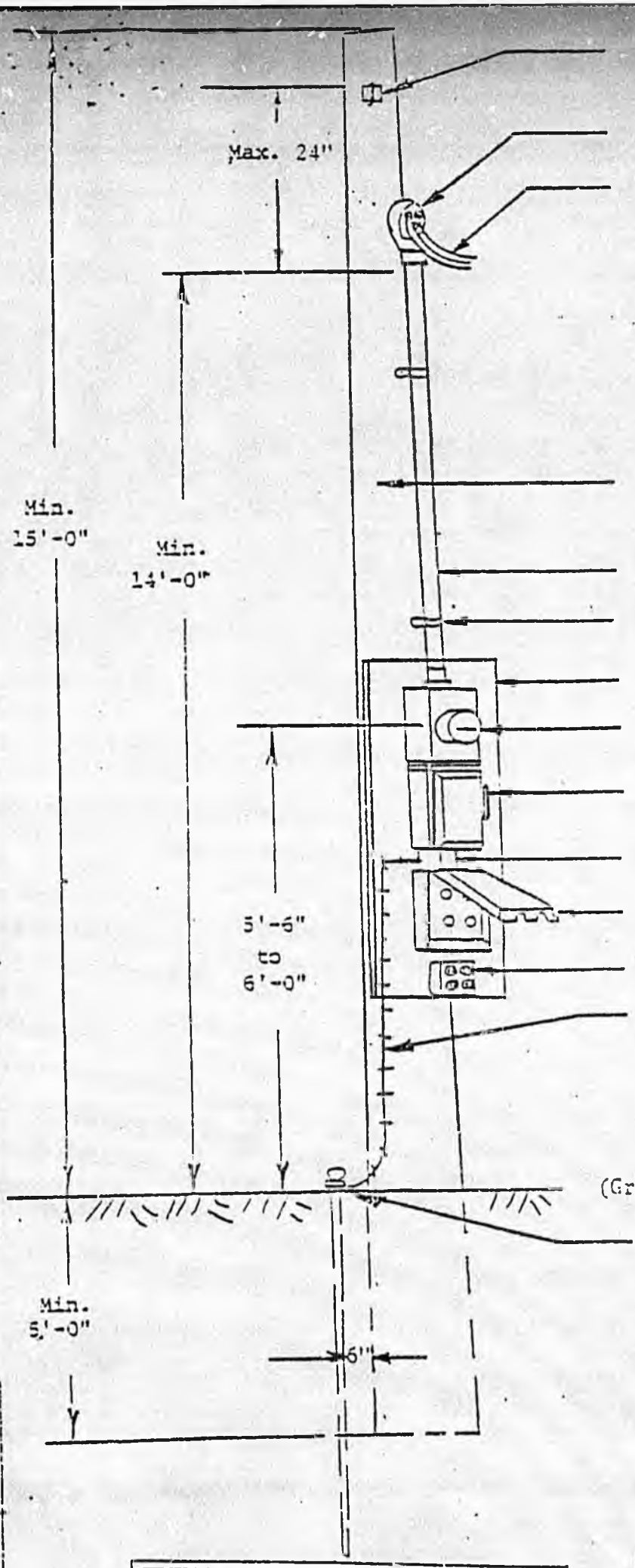
6. NEC 210-25 (e) Receptacles in dwellin units. Every dwelling unit in a structure shall have at least one exterior type receptacle, on an individual branch circuit, on the outside of the exterior wall near the driveway or parking area.

7. NEC 210-25 (f) Car heater outlets. Meters & receptacles installed for car heater outlets shall be protected from vehicle damage, by elevation to 3 1/2" above grade or other approved means.

8. NEC 230-26 (a) Exterior electrical services shall be placed on the gable end of structure where possible. When services are installed on the eaves side of building the mast shall extend above the roof. In the event the eave is not 24" in lenght the meter and disconnect shall be protected by an 18 gauge galvanized hood. The hood shall extend at least 6" past the meter face and 6" on each side of service equipment.

9. NEC 110-13 (c) The main service disconnect and meter shall be located on the exterior of all dwellings and structures containing not more than four dwelling units.

10. When there is more than one meter on any single service they shall be permanently identified by numbers at least one inch in height on the meter base or by other approved means.



Galvanized eyebolt with nut, Minimum 1/2" Diameter, (see not #1)

Weatherhead

Insulation shall be vulcanizable material. TH & THW not acceptable. Leave 18" tails and strip neutral tail to the weatherhead.

Service pole or construction grade 6" X 6" timber. Minimum 20' depending on clearance requirements.

Conduit

Conduit straps with lag screws.

Minimum 3/4" Plywood mounting boards.

Minimum 60AMP Raintight service entrance.

Disconnect Switch.

Conduit Nipple.

Raintight fuse or circuit breaker panel.

Weatherproof receptacles with GFI.

Tie #4 CU ground wire to neutral buss bar, lug to box, and continue to ground rod with staples every 6".

Minimum 5/8" X 8' ground rod with approved connector, must be visible for inspection. A minimum of 6" from pole.

NOTES

1. If service drop exceeds 50', pole must be guyed, weather head shall be 18' above grade.

* 2. Refer to the Electrical Code when using aluminum wire.

NOT TO BE USED FOR ENERGIZING PERMANENT WIRING SYSTEMS, CONSTRUCTION SERVICE APPROVED FOR CONSTRUCTION POWER ONLY. PERMIT EXPIRES 12 MONTHS AFTER DATE OF ISSUE. SERVICE SUBJECT TO DISCONNECT WHEN PERMIT EXPIRES, OR IF PERMANENT WIRING IS ENERGIZED.

OTHER METHODS ARE OPTIONAL UPON APPROVAL PRIOR TO INSTALLATION

SERVICE SIZE (MIN.)	MIN. WIRE SIZE	CONDUIT SIZE
60 AMP	6 CU*	1" Minimum
100 AMP	2 CU*	1 1/4" Minimum

MINIMUM CONSTRUCTION SERVICE



PIONEER ◆ PROGRESS

FAIRBANKS ALASKA
ALL AMERICA CITY

CITY OF FAIRBANKS

410 CUSHMAN ST.
FAIRBANKS, ALASKA 99701

CITY OF FAIRBANKS ALASKA

Date: 3/6/80

TO: State of Alaska , Department of Safety

FROM: R. H. Hardin, Building Official, City of Fairbanks

FOR: Code Review Commission

SUBJECT: Proposed Changes to Uniform Building & Related Codes.

DATE: Proposed Changes to Uniform Building & Related Codes.

















The members of the Code Review Commission of the City of Fairbanks, individually and as a body, object to this type of intrusion into the Code adoption and enforcement rights of the City of Fairbanks.

The Code Review Commission is a duly appointed body deriving its powers and duties from the Fairbanks Code of Ordinances. It is a highly professional body of seven (7) members, six (6) of whom are required to be licensed architects or engineers. The other member is a licensed Contractor of long standing in the community. All reside in the City of Fairbanks or the immediate area, all have maintained said residences for many years, and all freely donate their time to the furtherance of realistic codes and code enforcement. The attached Ordinances, Number 3844 and Number 3852, as amended, which adopt and amend the 1979 Uniform Building Code, Uniform Fire Code, Uniform Mechanical Code, Uniform Plumbing Code and the 1978 National Electrical Code, as well as other supportive administrative and technical codes, will better testify to the thorough and mature approach that the City of Fairbanks takes to this subject.

It is a policy of long standing that no proposed code amendment is presented to the City Council without prior review by the Code Review Commisssion. Also, it has been a long standing policy that the national codes will not be subjected to local amendment unless there is a definite need, i.e. conditions unique to this area. An attempt similar to this proposal was made by the Department of Safety approxdmately one (1) year ago and was eventually withdrawn after numberous people in Fairbanks, Anchorage, and possibly other cities, objected strenuously to the extent of the proposed changes and the lack of sufficient time for review. At that time the Building Department of the City of Fairbanks did, by letter of April 9, 1979, file a request for placement on the mailing list(s) so that we might receive as much advance notice as possible in the event of further efforts of this nature. Despite the above, it was necessary for the Building

Department and later the Code Review Commission to learn of this latest attempt on February 29, 1980, from sources other than the Department of Safety. Obviously, there remained a ridiculously brief amount of time for the Code Review Commission members to review and comment.

For the moment, please be advised that the Code Review Commission of the City of Fairbanks stands ready to review any legitimate code proposal that is properly submitted, including documentation supporting the need.

Further, the Commission feels that any State imposed bureaucratic system that ignores or circumvents the City's proven policy will be unprofessional and that continued attempts to exert unsolicited and unneeded influence will result in poor codes likely to be repetitive, arbitrary, unnecessarily restrictive, and costly.

It is respectfully requested:

1. That the State agencies respect the rights of the City in this matter.

2. That any Municipality currently enforcing a recognized code that is periodically updated through a proper procedure including amendments submitted by a qualified body be encouraged in their efforts to evaluate and adjust to their local needs.

3. That any thought of applying any one set of Codes and Amendment to any part of this vast and very diversified State be recognized as unrealistic and rather foolish.

We request that this proposal, so far as it affects the City of Fairbanks, be withdrawn and that its proponents properly submit their opinions and recommendations to the Code Review Commission if they still feel their opinions and recommendations have sufficient merit.

Sincerely,

R. H. Hardin
Building Official

City of Fairbanks

410 CUSHMAN STREET
FAIRBANKS, ALASKA
99701

TO: All Members of the Code Review Commission

FROM: R. H. Hardin, Building Official

SUBJECT: State of Alaska Department of Public Safety proposed code changes

DATE: March 3, 1980

This was handed to me late Friday, February 29, 1980; approximately 8:30 a.m. this date I received a phone call advising me of a meeting on March 6, 1980, at the Travelers Inn, at which this is to be discussed.

I do not know the origin of the marginal notes, therefore they should be ignored for the moment.

You will recall a similar attempt approximately one year ago by the State Fire Marshal to make similar changes through the Administrative Procedures Act with little effort to solicit opinions from the cities. In response to objections from Anchorage and here, the attempt was withdrawn and it was my understanding that the adoption of the new codes would largely preclude the need for this type of action. In the event future changes were desired, we were to be notified by mail with enough lead time to permit proper review by the City Departments and the Code Review Commission. If the State Fire Marshal, or anyone else, wants all these changes in the codes governing Fairbanks, let him feel free to submit them to the Code Review Commission for review. Otherwise he usurps the powers granted to the Code Review Commission by the Fairbanks General Code of Ordinances.

Sincerely,

R. H. Hardin
Building Official

RHH:nld

CITY OF FAIRBANKS

410 CUSHMAN ST.
FAIRBANKS, ALASKA 99701

PIONEER ♦ PROGRESS

FAIRBANKS ALASKA
ALL AMERICA CITY

April 9, 1979

Commissioner
Alaska State Department of Public Safety
Pouch "N"
Juneau, Alaska 99811

Dear Commissioner:

We understand that your agency has been empowered to adopt legislation and changes to the Alaska Administrative Code.

We also understand that each department keeps a mailing list so that they make interested parties aware of all proposed changes.

We therefore request that the Building Department of the City of Fairbanks be placed on the mailing list of all divisions within your department so that we will receive copies of any changes proposed.

Thank you for your cooperation and we will look forward to hearing from you.

Sincerely,

R. H. Hardin
Building Official

RHH:nld

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

PROPOSED CHANGES TO

TITLE 13. PUBLIC SAFETY

PART 2. FIRE PREVENTION

Chapter

50. Codes and Standards
51. Fireworks
52. Fire Service Operations
55. General Provisions

CHAPTER 50. CODES AND STANDARDS

Section

10. Occupancy Classifications
20. Building Codes
25. Fire Codes
30. Fire Detection and Control
40. (Repealed)
50. (Repealed)
60. Occupancy Standards
70. Inspections, Orders and Appeals
75. Deferring to Local Authorities
80. (Repealed)

13 AAC 50.010. OCCUPANCY CLASSIFICATIONS. All buildings or areas of a building are classified as to their occupancy according to the occupancy classifications defined in the Uniform Building Code (U.B.C.). (In effect before 7/23/59; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.080

13 AAC 50.020. BUILDING CODES. (a) The provisions of the U.B.C. chs. 1, 4 through 10, 12, 17 through 28, 30, 32 through 34, 36 through 40, 42, 43, 47, 48, 50 through 52, 54, appendix chapters 33, 48 and 55 and the U.B.C. Standards chs. 4, 6, 9, 17, 18, 24, 25, 26, 27, 28, 30, 32, 33, 37 38, 42, 43, 47, 48, 52, 54 and 55, are adopted to regulate all occupancies and buildings, except as provided below:

(1) sanitation and water closet requirements contained in the U.B.C. chs. 5, 6, 7, 8, 9, 10 and 12 are deleted;

(2) section 608 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input.";

Delete Exception

(3) section 708 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input.";

(4) section 808 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input.";

(5) section 1003 of the U.B.C. is revised by the deletion of "EXCEPTION: Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu per hour input.";

(6) section 1204 of the U.B.C. is revised only to the extent that where windows are provided as a means of egress or rescue they shall have a finished sill height not more than 36 inches above the floor;

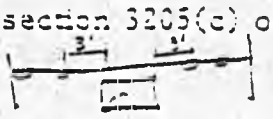
(7) section 1215 of the U.B.C. is deleted;

(8) section 1711 of the U.B.C. is deleted;

(9) section 1712 of the U.B.C. is deleted;

(10) section 1807(b) of the U.B.C. is deleted;

(11) section 3203(c) of the U.B.C. is revised by the deletion of paragraph 2;



(12) section 3317(b) of the U.B.C. is revised by the addition of paragraph 2 and 3 to read: "Every room in a Group E, Division 1 Occupancy used by students shall have direct exit to the exterior of the building or to an exterior exit balcony. In lieu of the above the building shall be equipped throughout with an approved automatic sprinkler system; the sprinkler system must be electronically interconnected with the school fire alarm system.

Classrooms having openable windows usable for emergency escape purposes, and with a sill height of the openable section not more than 36 inches above the floor and not more than 6 feet above the adjacent grade level need not have direct exits to the exterior nor need they be equipped with an automatic sprinkler system unless such system is required by other provisions of this chapter";

(13) section 3320(a) of the U.B.C. is revised to delete the requirement of a six inch noncombustible sill (dike) for oil-fired boilers.

(b) The provisions of the Uniform Mechanical Code (U.M.C.), chs. 1, 4 through 20 and appendix chs. 21 and 22, are adopted except as provided below:

(1) section 106 of the U.M.C. is deleted;

(2) section 1404(3) of the U.M.C. is revised by the deletion of exception "1. Boilers or central heating plants where the largest piece of fuel equipment does not exceed 400,000 Btu/h input.";

(3) section 1520 of the U.M.C. is revised to the extent that every test required by section 1520 will not be required to be conducted in the presence of the building official.

(c) The electrical systems of all occupancies must meet the standards of the National Electrical Code (N.E.C.).

(d) All new buildings which are classified as Group A, Division 1, 2, 2.1, or 3; Group B, Division 2; Group E, Division 1, 2, or 3; or Group R, Division 1, occupancies which have floors used for human occupancy more than 75 feet above the lowest story of fire department vehicle access, shall be equipped throughout the building with an automatic sprinkler system approved by the state fire marshal.

(e) Group E, Division 1 and 2 occupancies constructed in rural areas may not exceed 50 percent of the area allowed by U.B.C. section 505, 506, 302(a), Table No. 5-C and 5-D, unless equipped throughout the building with an automatic fire-extinguishing system approved by the state fire marshal. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.080

Editors Notes: (1) Copies of the N.E.C. may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

(2) Copies of the U.B.C. and U.B.C. Standards may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(3) Copies of the U.M.C. may be obtained from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

13 AAC 50.025. FIRE CODES. (a) The provisions of the Uniform Fire Code (U.F.C.) articles 1, 2, 9, 10, 11, 12, 13, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 45, 47, 48, 49, 50, 61, 62, 63, 74, 75, 76, 79, 80, 81, 82, 83, 84, appendices F, H and I, and the U.F.C. Standards articles 10, 24, 62, 76, 79, 81 and 82, are adopted for the safeguarding of life and property from the hazards of fire and explosion arising from the storage, handling and use of hazardous substances, materials and devices, and from other conditions hazardous to life and property, except as provided below:

(1) article 1 of the U.F.C. is revised by the deletion of section 1.102(b); 13 AAC 50.025. FIRE CODES (a) [Page 5 of these changes]

(2) article 2 of the U.F.C. is revised by the deletion of division 1, "Organization and Authority"; OK

(3) article 2 of the U.F.C. is revised by the deletion of division 2, "Duties and Procedures"; OK

(4) article 2, division 3 of the U.F.C. is revised by the deletion of section 2.301(a); OK

(5) article 2, division 3 of the U.F.C. is revised by the deletion of section 2.302; OK

(6) article 2, division 3 of the U.F.C. is revised by the deletion of section 2.303(b); OK

(7) permit requirements under the U.F.C. are [illegible] OK

(8) article 10 of the U.F.C. is revised by the deletion of division 1, "Operations At Fires Or Other Emergencies"; OK

(9) article 10, division 2 of the U.F.C. is revised by the deletion of section 10.205; OK

(10) article 10, division 2 of the U.F.C. is revised by the deletion of section 10.207; OK

(11) article 10, division 2 of the U.F.C. is revised by the deletion of section 10.208; OK

(12) article 10, division 3, section 10.301(c) of the U.F.C. is revised only to the extent that all hydrants shall be accessible to the fire department apparatus and the reference to roadways meeting the requirements of section 10.208 is deleted; OK

(13) article 10, division 3 of the U.F.C. is revised by the deletion of section 10.303; OK

(14) article 10, division 3 of the U.F.C. is revised by the deletion of section 10.304; OK

(15) article 10, division 3 of the U.F.C. is revised by the deletion of section 10.305; OK

(16) article 10, division 3 of the U.F.C. is revised by the deletion of section 10.306; OK

(17) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.101(d); OK

(18) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.105(e); OK

(19) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.106; OK

(20) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.107; OK

(21) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.108; OK

(22) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.110; OK

(23) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.111; OK

(24) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.112; OK

(25) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.113; OK

(26) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.114; OK

(27) article 11, division 1 of the U.F.C. is revised by the deletion of section 11.115; OK

(28) article 11, division 2 of the U.F.C is revised by the deletion of section 11.201(c); OK

(29) article 11, division 3 of the U.F.C. is revised by the deletion of section 11.302; OK

(30) article 11, division 4 of the U.F.C. is revised by the deletion of section 11.401; OK

(31) article 11, division 4 of the U.F.C. is revised by the deletion of section 11.402; OK

(32) article 11, division 4 of the U.F.C. is revised by the deletion of section 11.405; OK

(33) article 11, division 4 of the U.F.C. is revised by the OK
[illegible] of section 11.411;

(34) article 1[illegible]vision 4 of the U.F.C. is revised by the OK
[illegible] of section 11.412;

(35) article 11, division 4 of the U.F.C. is revised by the OK
[illegible] of section 11.413;

(36) article 11, division 4 of the U.F.C. is revised by the OK
[illegible] of section 11.414;

(37) article 12, section 12.101 of the U.F.C. is revised by OK
the [illegible] of paragraph 3;

(38) article 13 of the U.F.C. is revised by the [illegible] of OK
section 13.102;

(39) article 25, division 1 of the U.F.C. is revised by the OK
[illegible] of section 25.114;

(40) article 25, division 1 of the U.F.C. is revised by the OK
[illegible] of section 25.115;

(41) article 25, division 1 of the U.F.C. is revised by the OK
[illegible] of section 25.117;

(42) article 32 of the U.F.C. is revised by the [illegible] of OK
section 32.110;

(43) article 47 of the U.F.C. is revised by the [illegible] of OK
section 47.104;

(44) article 79, division 4 of the U.F.C. is revised by the OK
[illegible] of section 79.402(b)(1);

(45) article 79, division 7 of the U.F.C. is revised by the O[illegible]
[illegible] of section 79.710(d)(3);

(46) article 79, division 7 of the U.F.C. is revised by the OK
[illegible] of section 79.710(e)(3);

(47) article 79 of the U.F.C. is revised by the [illegible] of OK
division 10;

(48) article 79 of the U.F.C. is revised by the [illegible] of OK
division 12;

(49) article 82 of the U.F.C. is revised by the [illegible] of OK
section 82.103;

(b) Where no specific standards or requirements are set forth in the U.F.C. or in this chapter, compliance with the standards of the National Fire Protection Association (N.F.P.A.) or other nationally recognized fire safety standards approved by the state fire marshal will be considered compliance with requirements of this chapter. (Eff. / / , Reg.) 1.10.2(4

Authority: AS 18.70.080

Editors Notes: (1) Copies of the N.F.P.A. Standards may be obtained from the National Fire Protection Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

(2) Copies of the U.F.C. and U.F.C. Standards may be obtained from the Western Fire Chiefs Association, 5360 South Workman Mill Road, Whittier, California 90601.

13 AAC 50.030. FIRE DETECTION AND CONTROL. (a) Fire-extinguishing systems including automatic sprinkler systems must be installed as required by the U.B.C., U.F.C. and sec. 20 of this chapter and must meet the requirements of the U.B.C. Standards 38-1, 38-2, 38-3; U.F.C. Standard 10-3; N.F.P.A. Volume 1, Standards 11, 11A, 11B, 12, 12A, 12B, 13; and N.F.P.A. Volume 2, Standards 15 through 18, 20, 22, and 24.

(b) Fire detection systems must be installed as required by the U.B.C., U.F.C., AS 18.70.082, and Table No. 1 in (e) of this section, and must meet the requirements of the standards of the U.B.C. Standard 18-1; U.F.C. Standard 10-2; and N.F.P.A. Volume 7, Standards 71, 72A, 72B, 72C, 72D and 72E.

(c) Single station smoke detection devices must be installed as required by AS 18.70.095 and Table No. 1 in (e) of this section.

(d) Smoke detection devices required by AS 18.70.095 must meet the standards of N.F.P.A. Standard 74.

(e) Fire alarm systems must be installed as required by the U.B.C., U.F.C. and Table No. 1 of this subsection and must meet the requirements of the U.B.C. Standard 18-1; U.F.C. Standard 10-2; and N.F.P.A. Standards 71, 72A, 72B, 72C, 72D and 74.

TABLE NO. 1

REQUIREMENTS FOR THE INSTALLATION OF SMOKE DETECTORS AND FIRE DETECTION AND ALARM SYSTEMS

OCCUPANCY GROUPS	Type System: Manual Fire Alarm System	Supervised Smoke Detection System: Corridors & Stairways	Supervised Smoke Detection System: Sleeping area(s)	Single Station Smoke Detectors: Dwelling unit(s) Living Unit(s) Sleeping area(s)	Heat Detectors: Other areas
Group A-1, 2, 2.1, 3	X				
Group B-2 Office Buildings (see note 3)					
Group B-3 used for educational purposes beyond the 12th grade with more than 50 persons	X				
Group E-1, 2, 3 509	(1)				
Group H-1 50.113(a)	(2)				
Group I-1 hospitals, sanitariums, nursing homes and similar buildings 1009	(3)	X	X		
Group I-2 nursing homes, homes for children	(3)	X	X		
Group I-3 mental hospitals, mental sanitariums, jails, prisons, reformatories and similar bldgs	(3)	X	X		
Group R-1 apartments and hotels (see note 3) 12UBC(3)	(4)	X		12UBC(3) (7) AS 18.70.095	
Group R-1 nonconforming apartments and hotels more than two stories in height	X	X	X	X (7) AS 18.70.095	
Group R-1 remote housing facilities	X	X(6) AS 18.70.095	X(6) AS 18.70.095		X(6) AS 18.70.095
Group R-3 dwellings and lodging houses				12UBC(3) (7) AS 18.70.095	

X = exceeds UBC requirements

NOTES:
(1) See U.B.C. section 809.
(2) See U.F.C. section 50.113(a).
(3) See U.B.C. section 1009.
(4) See U.B.C. section 1202(b) and U.F.C. section 10.307(a).
(5) See U.B.C. section 1210(a).
(6) AS 18.70.082 requires automatic fire detection in that portion of the building used for living or sleeping purposes.
(7) AS 18.70.095 requires smoke detection devices to be installed in all living units built, manufactured or sold in the state on or after January 1, 1976.
(8) See U.B.C. sections 1807 and 1907 for special provisions for Group B, Division 2 office buildings and Group R, Division 1 occupancies.

(f) Portable and manual fire control equipment must be installed and maintained as required in sec. 25 of this chapter and must meet the requirements of U.B.C. Standard 38-3; U.F.C. Standard 10-1; N.F.P.A. Volume 1, Standard 10, Volume 2, Standards 14, 194 and 196, and Volume 12, Standard 198.

(g) Automatic fire-extinguishing systems must be maintained as required in sec. 25 of this chapter and must meet the requirements of U.B.C. Standards 38-1, 38-2; U.F.C. Standards 10-3, 79-1 and 79-2; N.F.P.A. Volume 1, Standards 11, 11A, 11B, 12, 12A, 12B and 13, Volume 2, Standards 15 through 18, 20, 22 and 24, and Volume 12, Standard 26.

(h) A permit must be obtained from the state fire marshal by a person commercially servicing, repairing, filling, or installing portable fire extinguishers; applications for the permit must be made in the manner required by the state fire marshal.

(i) No person or firm, directly or through an agent may sell or offer for sale in the state a fire extinguisher or extinguishing system, either new or used, unless it has been tested, approved, and labeled by the Factory Mutual Laboratories, Underwriters Laboratories, Inc., or other testing laboratory approved by the state fire marshal.

(j) No portable fire extinguisher or fixed fire-extinguishing system may be sold, leased, or installed in the state which uses as an extinguishing agent carbon tetrachloride, methyl bromide, or other halogenated hydrocarbon, toxic or poisonous liquid, or other agent which has not been accepted by an approved laboratory as specified in (i) of this section; a halon extinguishing system must be approved by the state fire marshal before installation.

(k) No individual, firm or corporation may sell or offer for sale any compound, powder, or liquid used as a fire retardant, or for flameproofing or for fire extinguisher refilling purposes unless the product has been approved by the Underwriters Laboratories, Inc., Factory Mutual Laboratories or other testing laboratory approved by the state fire marshal. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.010
AS 18.70.080
AS 18.70.082
AS 18.70.095

13 AAC 50.040. HAZARDOUS SUBSTANCES. Repealed / / .

13 AAC 50.050. HAZARDOUS PROCESSES. Repealed / /

13 AAC 50.060. OCCUPANCY STANDARDS. (a) Fire retardant paints or solutions, where required in any occupancy, must be renewed as often as necessary to maintain the required flame retardant properties.

(b) Emergency evacuation drills must be conducted in the following occupancies; and a record of each drill must be kept and the person in charge of the occupancy shall make these records available for inspection by the state fire marshal or his or her authorized representative:

(1) in educational (Group E of the U.B.C.) and institutional occupancies, emergency evacuation drills must be conducted once a month, except as provided in (2) and (3) of this subsection;

(2) in educational (Group B, Division 1 of the U.B.C.) occupancies, emergency evacuation drills must be conducted quarterly; University TVCC

(3) in hospital and nursing home occupancies, emergency evacuation drills must be conducted quarterly on each shift to familiarize employees with signals and emergency action required under varied conditions; the movement of infirm or bed-ridden patients to safe areas or to the exterior of the building is not required;

(4) emergency evacuation drills in (1), (2), and (3) of this subsection may be postponed during severe weather.

(c) Furnishings and decorations in assembly, educational, and institutional occupancies must be flame retardant; and must meet the standards of the large and small scale tests of N.F.P.A. Standard 701, Standard Method of Fire Tests for Flame-Resistant Textiles and Films.

(d) In institutional occupancies, window draperies and curtains for decorative and acoustical purposes must be flame retardant; and cubicle curtains must be noncombustible or flame retardant. Window draperies, curtains, and cubicle curtains must meet the standards of the large and small scale tests of N.F.P.A. Standard 701, Standard Method of Fire Tests for Flame-Resistant Textiles and Films.

(e) Wastebaskets and other waste containers in educational and institutional occupancies must be of noncombustible material or approved for intended use by Underwriters Laboratories, Inc., Factory Mutual Laboratories or other testing laboratory approved by the state fire marshal.

(f) Acrylonitrile Butadiene-Styrene (ABS) or Polyvinyl Chloride (PVC) piping installations in building drainage systems shall be limited to residential construction, not more than 2 stories in height. U.P.C.

(g) Equipment, boiler, mechanical and electrical panel rooms in any occupancy shall not be used for the storage of combustible merchandise, material or equipment. (In effect before 7/23/69; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.010
AS 18.70.080

13 AAC 50.070. INSPECTIONS, ORDERS AND APPEALS. (a) When an officer of the division of fire prevention finds a building or premises in which the following dangerous conditions or materials exist, he or she shall order the conditions or materials to be remedied or removed in such manner as may be prescribed by the state fire marshal:

(1) dangerous amounts of combustible, explosive, or otherwise hazardous materials;

(2) hazardous conditions arising from defective or improperly installed equipment for handling or using combustible, flammable, explosive, or otherwise hazardous materials;

(3) dangerous accumulations of rubbish, wastepaper, boxes, shavings, or combustible or flammable liquids or materials;

(4) accumulations of dust or waste materials in air conditioning or ventilating systems or of grease in kitchen or other exhaust ducts;

(5) obstructions to or on fire escapes, stairs, passageways, doors, or windows, which will interfere with operations of the fire department or egress of occupants in case of fire or explosion;

(6) ineffective fire assembly, exit door, attic separation, area separation, fire separation, or occupancy separation;

(7) any chimney, smokestack, stove, oven, incinerator, furnace or other heating device, or electric fixture found to be defective or unsafe so as to create a fire danger;

(8) a building or structure which, due to lack of repairs, adequate exit facilities, automatic or other fire alarm apparatus or fire-extinguishing equipment, or any other cause including age creates a hazardous condition;

(9) any other condition which violates this chapter, and which the state fire marshal finds is hazardous.

(b) If an order is issued to eliminate a dangerous or hazardous condition described in (a) of this section and the condition is not corrected within the time specified in the order, the state fire marshal will, in his or her discretion, post at the entrance to the building or premises a notice to read, "DO NOT ENTER, UNSAFE TO OCCUPY. DEPARTMENT OF PUBLIC SAFETY, DIVISION OF FIRE PREVENTION". The notice must remain posted until the required repair, demolition or removal is completed, and may not be removed without written permission of the state fire marshal. No person may enter a posted building except for the purpose of making required repairs, demolition or removal.

(c) The service of an order for the correction of a violation of (a) of this section must be made upon the owner, occupant, or other persons responsible for the condition, either by delivering a copy to the person responsible for the condition or to the person in charge of the premises, by affixing a copy in a conspicuous place on the door to the entrance of the premises, or by mailing a copy of the report to the responsible person by certified mail at his or her last known address.

(d) When buildings or other premises are owned by one person and occupied by another under lease or similar agreement, orders issued under (a) of this section apply to the occupant except where the rule or order requires additions to or changes in the premises which would become the real property of the owner of the premises. In these cases, the rule or order must be sent to the owner.

(e) When an order is made by the state fire marshal or his or her authorized representative, the owner or occupant may, within seven days after receipt of the order, file a written appeal to the state fire marshal who shall, within 10 days after receipt of the appeal, review the order and file his or her written decision. The order remains in force and must be complied with within the time specified unless by the authority of the state fire marshal the order is revoked. The state fire marshal's decision on an appeal under this subsection constitutes a final order of the Department of Public Safety for purposes of AS 18.70.100. (In effect before 7/28/59; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.070
AS 18.70.080
AS 18.70.090

13 AAC 50.075. DEFERRING TO LOCAL AUTHORITIES. (a) If, in the opinion of the state fire marshal, a city or borough of any class in the state has the expertise to conduct fire safety inspections and to enforce state fire safety regulations, the state fire marshal may defer to the local authorities for fire safety inspection and enforcement activities; the deferral being effective upon acceptance by the city or borough.

(b) The state fire marshal may cancel a deferral following 30 days written notice if he or she finds the city or borough fire safety inspection and enforcement activities do not adequately enforce state statutory and regulatory provisions. (Eff. / / , Reg.)

Authority: AS 18.70.080

13 AAC 50.080. DEFINITIONS. Repealed / / .

CHAPTER 51. FIREWORKS

Section

10. Use of Dangerous Fireworks
20. Permits for the Sale of Salable Fireworks
30. Storage of Dangerous and Salable Fireworks by a Wholesaler
40. Discharge of Fireworks
50. Revocation of Licenses and Permits
60. Seizure

13 AAC 51.010. USE OF DANGEROUS FIREWORKS. (a) A permit is required for the use of dangerous fireworks under AS 18.72.010(b) and will be granted upon verified application to the state fire marshal on forms provided by him or her.

(b) There must be attached to the application for a permit under this section a policy or certified true copy of a policy of public liability insurance coverage and products liability insurance coverage, including both accident and occurrence insurance in the amount of no less than $500,000 for bodily injury and death and no less than $300,000 for property damage. The insurance must be provided by the applicant or his or her employer.

(c) Every use or display shall be handled by a competent operator. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.010
AS 18.72.010

13 AAC 51.020. PERMITS FOR THE SALE OF SALABLE FIREWORKS. (a) A permit is required for the sale of salable fireworks under AS 18.72.020(a) and will be granted upon verified application to the state fire marshal on forms provided by him or her.

(b) No permit will be granted to a person who plans to sell fireworks at retail within 250 feet of any place of habitation or public assembly. (Eff. 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.010
AS 18.72.020
AS 18.72.030

13 AAC 51.030. STORAGE OF DANGEROUS AND SALABLE FIREWORKS BY A WHOLESALER. (a) N.F.P.A. Standard 44A, chapters 3 and 4, is adopted for regulating the storage of dangerous and salable fireworks by a wholesaler.

(b) The license of a wholesaler of dangerous and salable fireworks who fails to comply with this section is subject to revocation under sec. 50 of this chapter.(Eff. 6/25/69, Reg. 30; am / / ,Reg.)

Authority: AS 18.70.010
AS 18.72.010
AS 18.72.030

13 AAC 51.040. DISCHARGE OF FIREWORKS. (a) No fireworks of any kind may be discharged in the state within 250 feet of an establishment that sells fireworks at retail or wholesale.

(b) The discharge of dangerous fireworks in the state, except for those purposes for which a permit is issued under AS 18.72.010 and this chapter, is prohibited. (Eff. 6/25/69, Reg. 30; am / / , Reg.)

Authority: AS 18.70.080
AS 18.72.010

13 AAC 51.050. REVOCATION OF LICENSES AND PERMITS. The state fire marshal may revoke a permit or license where the permittee or licensee fails to comply with the requirements of this chapter or with the provisions of AS 18.72, or where the permittee or licensee conducts his or her business in a manner which constitutes a hazard to life and property. (Eff. 6/25/69, Reg. 30; am / / , Reg.)

Authority: AS 18.70.090

13 AAC 51.060. SEIZURE. The state fire marshal shall seize or remove, at the owner's expense, all dangerous or salable fireworks from persons who do not have a valid permit or license under AS 18.72 or this chapter. (Eff. 6/25/69, Reg. 30; am / / , Reg.)

Authority: AS 18.70.070

CHAPTER 52. FIRE SERVICE OPERATIONS

Section

30. Standards of Organization and Services of Fire Departments

13 AAC 52.030. STANDARDS OF ORGANIZATION AND SERVICES OF A FIRE DEPARTMENT. (a) The state fire marshal will recognize a fire depart-

ment empowered to perform its duties by municipal ordinance. The state fire marshal may also recognize a volunteer fire department outside a municipality.

(b) A fire department must have operating regulations which:

(1) define the boundaries of the area served;

(2) provide for the appointment of chiefs of the department;

(3) provide for programs of inspection, training and fire prevention;

(4) provide for the investigation and determination of the cause of each fire occurring within its boundaries and the reporting of each fire to the state fire marshal;

(5) provide for a liaison with a water authority on matters of importance to the fire department;

(6) provide for regular meetings of fire department personnel for both business and training purposes. (Eff. 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.010
AS 43.18.010(a)(2)

CHAPTER 55. GENERAL PROVISIONS

Section

20. (Repealed)
130. Modifications and Waivers
150. Definitions

13 AAC 55.020. PRIMA FACIE EVIDENCE. Repealed / / .

13 AAC 55.130. MODIFICATIONS AND WAIVERS. The state fire marshal has the authority to modify or waive any provision of chs. 50-55 of this title when there are practical difficulties which make strict compliance with these requirements very difficult; provided however, that modifications or waivers will be granted only when the intent as provided in sec. 10 of this chapter is met and public safety is secured. Applications for modifications or waivers shall be made in writing and include particulars as to why the regulatory provisions cannot be followed including the applicants reasons why any proposed alternative method meets the intent of chs. 50-55 of this title as provided in sec. 10 of this chapter. All requests will be answered in writing and a record maintained in the fire marshal's office. (In effect before 7/28/69; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.080

13 AAC 55.150. DEFINITIONS. (a) In chs. 50-55 of this title, unless the context indicates otherwise:

(1) "U.B.C." means the Uniform Building Code and Uniform Building Code Standards published by the International Conference of Building Officials, 1979 Edition;

(2) "U.M.C." means the Uniform Mechanical Code and Uniform Mechanical Code Standards published by the International Conference of Building Officials, 1979 Edition;

(3) "U.F.C." means the Uniform Fire Code and Uniform Fire Code Standards published by the International Conference of Building Officials and Western Fire Chiefs Association, 1979 Edition;

(4) "N.E.C." means the National Electrical Code, 1978 Edition, published by the National Fire Protection Association and approved by the American Standards Association;

(5) "I.C.B.O." means the International Conference of Building Officials;

(6) "N.F.P.A." means the National Fire Protection Association, National Fire Codes, Volumes I through [illegible];

(7) "I.S.O." means the Insurance Services Office, Sprinklered Risk Section, 465 California Street, San Francisco, California 94104;

(8) "ABS" means acrylonitrile butadiene - styrene pipe;

(9) "approved by the state fire marshal" means approval after investigation or testing conducted by the state fire marshal;

(10) "bureau of fire prevention" means the state division of fire prevention or the fire prevention division of an organized municipal fire department;

(11) "chief", "chief of the fire department", "fire chief", "chief engineer" or "chief of the fire prevention bureau" means the state fire marshal or the chief of an organized municipal fire department;

(12) "drainage system" means all the piping within public or private premises which conveys sewage, rainwater or other liquid wastes to a point of disposal. It does not include the mains of public sewer system or private or public sewage-treatment or disposal plant;

(13) "dwelling unit" and "living unit" mean one or more habitable rooms which are occupied or which are intended or designed to be occupied by one family, with facilities for living, sleeping, cooking, and eating;

(14) "living area" means one or more habitable rooms which are occupied or intended or designed to be occupied for sleeping, cooking, eating or recreation purposes;

(15) "local political subdivision" means a borough or city of any class;

(16) "manual fire alarm system" means a local manual alarm system installed in conformance with U.B.C. Standard 13-1; U.F.C. Standard 10-2; N.F.P.A. Standard 72A; and approved by the state fire marshal;

(17) "occupancy" means the purpose for which a building or part of a building is used or intended to be used, and also includes the building or room housing the use; "change of occupancy" does not include change of tenants or proprietors;

(18) "organized fire department" means a fire department or fire protection group that has filed a certificate of existence with the state fire marshal and has received official recognition;

(19) "PVC" means polyvinyl chloride pipe;

(20) "rural or rural areas" means areas where there is no organized fire department with a recognized water system;

(21) "sleeping area" means one or more habitable rooms including guest rooms and bedrooms which are occupied or intended to be occupied for sleeping purposes.

(b) In chs. 50-55 of this title the definitions in the U.B.C., U.F.C., and the N.F.P.A. standards are adopted, except as they are modified in (a) of this section. (In effect before 7/28/89; am 6/25/69, Reg. 30; am 2/21/71, Reg. 37; am / / , Reg.)

Authority: AS 18.70.080

Editors Note: Copies of the codes adopted in chs. 50-55 of this title may be examined in the offices of the State Fire Marshal in Juneau, Anchorage, and Fairbanks. Copies of 13 AAC chs. 50-55 may be obtained in these offices.

STATUTES

RE:

Comm.

Alaska State Legislature

JUNEAU ALASKA

MEMORANDUM

To: Senator Hohman

From: Rob

Re: Administrative Regulation Review Committee

STATUTORY AUTHORIZATION:	AS 24.20.400--AS 24.20.460.
STATUS:	Permanent Interim Committee of the legislature.
PURPOSE:	Need for prompt legislative review of administrative regulations.
MEMBERSHIP:	Three members from each body(house/ senate); each body must include members of both major political parties in its appointees Speaker and president appoint. Chairman elected by members.
TERM OF MEMBERSHIP:	Two years.
VACANCIES:	Filled by appointment by Speaker or president.
MEETINGS:	During session or during interim, at such times and places within the state as the chairman may determine. Per diem is the same as during session. You may not draw double per diem however during session.
POWERS OF SUSPENSION:	You may suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature. Suspension power continues until 30 days after conveninig. A 2/3 affirmative vote of the committee is required for suspension

POWERS OF SUSPENSION: (continued)

Suspension is effective on the date a committee report passed in favor of suspension is filed with the lt. Governor.

You must afford a hearing for all interested parties at least 15 days prior to suspension.

The committee has no power to suspend an emergency regulation.

STAFF:

Legislative Affairs Agency shall provide professional and clerical assistance under the auspices of the Legislative Council.

POWERS; GENERAL:

1. to organize and adopt rules for the conduct of its business;
2. to hold public hearings;
3. to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information.
4. to examine all administrative regulations to determine if they properly implement legislative intent.
5. to make recommendations for legislative annullment of administrative regulations under AS 44.62.320. (copy attached.)
6. to prepare and distribute reports, mamoranda, or other materials.

NOTE: Special charge to the committee

The committee is charged with reviewing the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall not later than January 20, 1979, make formal recommendations with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement , interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee

are to be (shall be) transmitted to the first regular session of the 11th Alaska Legislature.

Alaska coastal management program....AS 46.40.010 et seq.

Coastal Policy Council....AS 44.19.891 et seq.

Planning assistance for development and maintenance of district coastal management programs....AS 44.47.095.

NOTE: LEGISLATIVE COUNCIL TIE-IN WITH ADMINISTRATIVE REGULATION REVIEW COMMITTEE

The following language appears in the legislation establishing the Legislative Council (see AS 24.20.065, copy attached)

> "The legislative council shall annually examine administrative regulations...to determine whether or not
>
> (1) the courts and agencies are properly implementing legislative purposes;...
>
> (3) the opinions or regulations indicate unclear or ambiguous statutes."
>
> "The legislative council shall submit a comprehensive report of the annual examination with recommendation to the members of the legislature at the start of each regular session."

COMMENT: Apparently both the council and the Adm. Reg. Review Committee have the power and mandate to do essentially the same thing, review regulations to determine if they are in keeping with legislative intent.

The council provides the Adm. Reg. Review Committee with "...professional and clerical assistance under the auspices of the Legislative Council."

Both Council and Adm. Reg. Review Committee are charged with making recommendations regarding annulment of regulations. The Administrative Regulation Review Committee has a specific charge "...to make recommendations for legislative annulment of administrative regulations under AS 44.62.320. The Council charge is not as specific but none the less clear:

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TERM OF MEMBERSHIP:	Two years.
VACANCIES:	Filled by appointment by Speaker or president.
MEETINGS:	During session or during interim, at such times and places within the state as the chairman may determine. Per diem is the same as during session. You may not draw double per diem however during session.
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POWERS OF SUSPENSION: (continued)

Suspension is effective on the date a committee report passed in favor of suspension is filed with the lt. Governor.
You must afford a hearing for all interested parties at least 15 days prior to suspension.
The committee has no power to suspend an emergency regulation.

STAFF:

Legislative Affairs Agency shall provide professional and clerical assistance under the auspices of the Legislative Council.

POWERS; GENERAL:

1. to organize and adopt rules for the conduct of its business;
2. to hold public hearings;
3. to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information
4. to examine all administrative regulations to determine if they properly implement legislative intent.
5. to make recommendations for legislative annullment of administrative regulations under AS 44.62.320. (copy attached.)
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The committee is charged with reviewing the administrativ regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall not later than January 20, 1979, make formal recommendations with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement , interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee

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STATE OF ALASKA
THE LEGISLATURE
LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M February 13, 1979

SUBJECT: Synopsis of structure, functions, and powers of the Administrative Regulation Revision Committee

TO: Senator Don Bennett

FROM: Joseph A. Guthrie, Legislative Counsel

STRUCTURE

* Permanent interim committee of the Legislature (AS 24.20.400).

* Composed of three members of the House appointed by the Speaker of the House, and three members of the Senate appointed by the President of the Senate (AS 24.20.410).

* Members serve for the duration of the Legislature during which they are appointed and; until they are re-appointed on the appointment of their successor, during the next Legislature, (24.20.420).

* Members entitled to travel and per diem for the minimum time required to get to and from meetings, and for the period while attending meetings (AS 24.20.440).

* Legislative Affairs Agency provides staff to the committee (AS 24.20.450).

FUNCTIONS

* The establishment of the committee recognizes the need for prompt Legislative review of administrative regulations, filed by the lieutenant governor, to determine whether annulment under AS 44.62.320 is appropriate (first sentence of AS 24.20.400).

*Examine all administrative regulations to determine if they properly implement legislative intent (AS 24.20.460).

POWERS

* Make recommendations to the whole Legislature regarding the legislative annulment of administrative regulations under AS 44.62.320 (AS 24.20.460).

* When the Legislature is not in session, the committee may suspend the effectiveness of a regulation adopted or an amendment made to a regulation subsequent to adjournment of the previous regular session of the Legislature. The suspension remains in effect until 30 days after the Legislature reconvenes, (24.20.445).

* Meet during sessions of the Legislature and during the interim between sessions at such times and places in the state, as the chairman may determine, (24.20.460).

* Introduce bills and resolutions (Sec. AS 24.30.060).

* Hold public hearings, (24.20 460).

* Require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information, (24.20.460).

JAG:nem

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THE LEGISLATURE

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JAG:nem

Effect of amendment. — The 1977 amendment, effective May 29, 1977, in the third sentence of subsection (a), substituted "affects or limits" for "shall affect or limit" and added the language beginning "nor does it create a tax exemption" to the end.

As the rest of the section was not affected by the amendment, it is not set out.

Article 4. General Provisions.

Section
220. Definitions

Sec. 44.61.220. Definitions. In this chapter

(5) "industrial plant" or "manufacturing plant" means a plant used or intended for use in connection with making, processing, preparing, or producing in any manner, goods, products or substances of any kind or nature or in connection with developing or utilizing a natural resource, or extracting, smelting, transporting, converting, assembling or producing in any manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and materials, products or substances of any kind or nature, any plant or facility used or intended for use in connection with air and water transportation, or any plant or facility for the prevention, limitation or control of air or water pollution, for the disposal of sewage or solid waste, or for the local furnishing of electric energy or gas;

(7) "project" means a manufacturing or industrial plant or plants, the construction or acquisition of which is to be financed in whole or in part by the authority under this chapter;

(am §§ 4, 5 ch 64 SLA 1977)

Effect of amendment. — The 1977 amendment, effective May 29, 1977, added the language beginning "any plant or facility used or intended for use" to the end of paragraph (5) and deleted "and the reasonable aggregate project cost of which to be financed by the authority under this chapter will exceed, in the opinion of the authority, $500,000" from the end of paragraph (7).

As the rest of the section was not affected by the amendment, it is not set out.

Part 5. Administrative Procedure.

Chapter 62. Administrative Procedure Act.

Article 1. Application and Effect.

Sec. 44.62.030. Consistency between regulation and statute.

Regulation accorded presumption of validity. — An administrative regulation must be accorded a presumption of validity, and the challenger of the regulation must demonstrate its invalidity. Union Oil Co. v. State, Sup. Ct. Op. No. 1663 (File No. 2650), 574 P.2d 1266 (1978).

Article 2. Submission, Filing and Publication of Regulations.

Section
50. Style and forms
60. Preparation and filing
125. Regulations attorney

Sec. 44.62.040. Submitting regulations.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176 (1977).

Sec. 44.62.050. Style and forms. The Department of Law shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under § 40 of this chapter. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969; am § 1 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the beginning of the section.

Sec. 44.62.060. Preparation and filing. (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter.
(am § 2 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the end of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency [now Department of Law] drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under this chapter. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.080. Endorsement and file.

This chapter does not require that a clause be inserted in each regulation stating where a text incorporated by reference can be found. Northern Lights

Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

This appears to be unnecessary, since by law a copy of the text must be available at the lieutenant governor's office. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

And failure to so specify does not invalidate regulation. — Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.125. Regulations attorney. (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969; am § 3 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" in paragraph (4) of subsection (b).

Article 3. The Alaska Administrative Register and Code.

Sec. 44.62.130. Codification and publication.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Article 4. Procedure for Adopting Regulations.

Section
190. Notice of proposed action

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

(am § 4 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "state of Alaska legislators and the Legislative Affairs Agency" for "state legislators" in paragraph (6) of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency [now Department of Law] drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the

legislature or promulgated under the Alaska Administrative Procedure Act. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

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Sec. 44.62.210. Public proceedings.

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

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Article 5. Judicial Review.

Sec. 44.62.300. Court review.

Two distinct types of administrative decisions, etc.

The supreme court has distinguished between two types of questions which may confront a court in judicial review of administrative action. Where the agency decision involves the formulation of fundamental policy or the particularized expertise and experience of administrative personnel, the court will defer to the administrative decision, inquiring only whether it has a reasonable basis. On the other hand, where the issues to be resolved turn on statutory interpretation, the knowledge and expertise of the agency is not conclusive of the intent of the legislature in passing a statute. Statutory interpretation is within the scope of the court's special competency, and it is the court's duty to consider the statute independently. Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

"Reasonable basis" standard of review.

In accord with 2nd paragraph in original. See Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Where there is primarily a question of a statutory interpretation and legislative intent, it is a question of whether "the administrative agency has acted within the scope of its authority" and concerns "statutory interpretations requiring the special competency of the courts." Therefore, the reasonable basis test is not the appropriate standard of review. Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Alaska Workmen's Compensation Board. — Although the Alaska Workmen's

Effect of amendment. — The 1977 amendment, effective May 29, 1977, in the third sentence of subsection (a), substituted "affects or limits" for "shall affect or limit" and added the language beginning "nor does it create a tax exemption" to the end.

As the rest of the section was not affected by the amendment, it is not set out.

Article 4. General Provisions.

Section
220. Definitions

Sec. 44.61.220. Definitions. In this chapter

(5) "industrial plant" or "manufacturing plant" means a plant used or intended for use in connection with making, processing, preparing, or producing in any manner, goods, products or substances of any kind or nature or in connection with developing or utilizing a natural resource, or extracting, smelting, transporting, converting, assembling or producing in any manner, minerals, raw materials, chemicals, compounds, alloys, fibers, commodities and materials, products or substances of any kind or nature, any plant or facility used or intended for use in connection with air and water transportation, or any plant or facility for the prevention, limitation or control of air or water pollution, for the disposal of sewage or solid waste, or for the local furnishing of electric energy or gas;

(7) "project" means a manufacturing or industrial plant or plants, the construction or acquisition of which is to be financed in whole or in part by the authority under this chapter;

(am §§ 4, 5 ch 64 SLA 1977)

Effect of amendment. — The 1977 amendment, effective May 29, 1977, added the language beginning "any plant or facility used or intended for use" to the end of paragraph (5) and deleted "and the reasonable aggregate project cost of which to be financed by the authority under this chapter will exceed, in the opinion of the authority, $500,000" from the end of paragraph (7).

As the rest of the section was not affected by the amendment, it is not set out.

Part 5. Administrative Procedure.

Chapter 62. Administrative Procedure Act.

Article 1. Application and Effect.

Sec. 44.62.030. Consistency between regulation and statute.

Regulation accorded presumption of validity. — An administrative regulation must be accorded a presumption of validity, and the challenger of the regulation must demonstrate its invalidity. Union Oil Co. v. State, Sup. Ct. Op. No. 1563 (File No. 2650), 574 P.2d 1266 (1978).

Article 2. Submission, Filing and Publication of Regulations.

Section
50. Style and forms
60. Preparation and filing
125. Regulations attorney

Sec. 44.62.040. Submitting regulations.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176 (1977).

Sec. 44.62.050. Style and forms. The Department of Law shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under § 40 of this chapter. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969; am § 1 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the beginning of the section.

Sec. 44.62.060. Preparation and filing. (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter.
(am § 2 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" near the end of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency [now Department of Law] drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under this chapter. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.080. Endorsement and file.

This chapter does not require that a clause be inserted in each regulation stating where a text incorporated by reference can be found. Northern Lights

Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

This appears to be unnecessary, since by law a copy of the text must be available at the lieutenant governor's office. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

And failure to so specify does not invalidate regulation. — Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.125. Regulations attorney. (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the Department of Law under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969; am § 3 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "Department of Law" for "Legislative Affairs Agency" in paragraph (4) of subsection (b).

Article 3. The Alaska Administrative Register and Code.

Sec. 44.62.130. Codification and publication.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Article 4. Procedure for Adopting Regulations.

Section
190. Notice of proposed action

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent State of Alaska legislators and the Legislative Affairs Agency.

(am § 4 ch 64 SLA 1978)

Effect of amendment. — The 1978 amendment substituted "state of Alaska legislators and the Legislative Affairs Agency" for "state legislators" in paragraph (6) of subsection (a).

As the rest of the section was not affected by the amendment, it is not set out.

Failure to specify in regulation incorporating building code where copies of code could be obtained did not invalidate regulation. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency [now Department of Law] drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the

legislature or promulgated under the Alaska Administrative Procedure Act. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held severable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Sec. 44.62.210. Public proceedings.

Agency cannot adopt future amendments to code, etc., by reference. — According to the Legislative Affairs Agency drafting manual, an administrative agency may not adopt by reference a code or set of standards from another state, the federal government or a private organization and provide that future amendments as they become effective are being adopted also. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

One reason for the prohibition against delegation of the future law-making power of the state to private groups is that when amendments are adopted by these groups the public does not necessarily receive notice of, or have an opportunity to comment on or criticize, the amendments, as it does when they are adopted by the legislature or promulgated under the Alaska Administrative Procedure Act. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Clause of regulation incorporating future amendments held separable. — Clause of an administrative regulation incorporating 1955 Uniform Building Code which also incorporated all future amendments of the code was separable from the rest of the administrative regulation, leaving the 1955 Uniform Building Code provisions applicable in a negligence action based on the death of a guest in a motel fire. Northern Lights Motel, Inc. v. Sweaney, Sup. Ct. Op. No. 1386 (File No. 2476), 561 P.2d 1176, aff'd on rehearing, 563 P.2d 256 (1977).

Article 5 Judicial Review.

Sec. 44.62.300. Court review.

Two distinct types of administrative decisions, etc.

The supreme court has distinguished between two types of questions which may confront a court in judicial review of administrative action. Where the agency decision involves the formulation of fundamental policy or the particularized expertise and experience of administrative personnel, the court will defer to the administrative decision, inquiring only whether it has a reasonable basis. On the other hand, where the issues to be resolved turn on statutory interpretation, the knowledge and expertise of the agency is not conclusive of the intent of the legislature in passing a statute. Statutory interpretation is within the scope of the court's special competency, and it is the court's duty to consider the statute independently. Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

"Reasonable basis" standard of review.

In accord with 2nd paragraph in original. See Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Where there is primarily a question of a statutory interpretation and legislative intent, it is a question of whether "the administrative agency has acted within the scope of its authority" and concerns "statutory interpretations requiring the special competency of the courts." Therefore, the reasonable basis test is not the appropriate standard of review. Stevenson v. Burgess, Sup. Ct. Op. No. 1514 (File No. 2791), 570 P.2d 728 (1977).

Alaska Workmen's Compensation Board. — Although the Alaska Workmen's

Compensation Board is a quasi-judicial agency, the same criteria for judicial review of any administrative action should apply. Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

Article 7. Legislative Review of Rules.

Section
320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review. (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978)

Effect of amendment. The 1978 amendment substituted "At the same time" for "Within 45 days after" at the beginning of subsection (b).

Article 8. Administrative Adjudication.

Section
330. Application of §§ 330 — 630

Sec. 44.62.330. Application of §§ 330 — 630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under §§ 330 — 630 of this chapter. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 330 — 630 of this chapter is limited to named functions of the agency.

(1) Board of Barber Examiners
(2) Board of Chiropractic Examiners
(3) Board of Dental Examiners
(4) State Board of Registration for Architects, Engineers and Land Surveyors
(5) Repealed by § 13 ch 218 SLA 1976.
(6) Board of Examiners in Optometry

Sec. 24.20.311. Reports. The committee shall file copies of its approved audit reports including any committee recommendations with the governor, the agency concerned and the legislature. An annual report summarizing the audit reports and committee recommendations made during the year shall be filed with the governor and with the legislature within the first five days of each regular session of the legislature. Reports shall be approved by a majority of the committee before their release and shall be open to public inspection after their release to the legislature. (§ 2 ch 95 SLA 1971)

Article 3. Administrative Regulation Review Committee.

Section		Section	
400.	Administrative Regulation Review Committee established	440.	Meetings
410.	Membership	445.	Power of suspension
420.	Term of membership	450.	Staff
430.	Vacancies	460.	Powers

Sec. 24.20.400. Administrative Regulation Review Committee established. The Administrative Regulation Review Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need for prompt legislative review of administrative regulations filed by the lieutenant governor to determine whether annulment under AS 44.62.320 is appropriate. (§ 1 ch 27 SLA 1975)

Editor's note. — Section 6, ch. 84, SLA 1977 provides: "The Administrative Regulation Review Committee established in AS 24.20.400 — 24.20.460 shall review the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall, not later than January 20, 1979, make formal recommendation with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement, interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee shall be transmitted to the first regular session of the Eleventh Alaska Legislature." As to the Alaska coastal management program, see AS 46.40.010 et seq. As to the Alaska Coastal Policy Council, see AS 44.19.891 et seq. As to planning assistance for development and maintenance of district coastal management programs, see AS 44.47.095.

Sec. 24.20.410. Membership. The Administrative Regulation Review Committee is composed of three members of the house appointed by the speaker of the house, and three members of the senate appointed by the president of the senate. The membership from each house shall include at least one member from each of the two major political parties. The committee elects a chairman from among its members. (§ 1 ch 27 SLA 1975)

Sec. 24.20.420. Term of membership. The committee shall be organized within 15 days after the organization of each legislature.

Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor. (§ 1 ch 27 SLA 1975)

Sec. 24.20.430. Vacancies. When a vacancy occurs in the membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (§ 1 ch 27 SLA 1975)

Sec. 24.20.440. Meetings. The Administrative Regulation Review Committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (§ 1 ch 27 SLA 1975)

Sec. 24.20.445. Power of suspension. (a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a committee report passing in favor of suspension is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a report is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's report is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) No action under (a) of this section may be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978)

Revisor's note (1978). — The language of AS 24.20.445(d) was drawn from sec. 2, ch. 3, SLA 1978 and codified as part of AS 24.20.445.

Sec. 24.20.450. Staff. The Legislative Affairs Agency shall provide the committee with professional and clerical assistance under the auspices of the Legislative Council. (§ 1 ch 27 SLA 1975)

Sec. 24.20.460. Powers. The Administrative Regulation Review Committee has the following powers:

(1) to organize and adopt rules for the conduct of its business;

(2) to hold public hearings;

(3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) to examine all administrative regulations to determine if they properly implement legislative intent;

(5) to make recommendations for legislative annulment of administrative regulations under AS 44.62.320;

(6) to prepare and distribute reports, memoranda, or other materials. (§ 1 ch 27 SLA 1975)

Article 4. Legislative Board of Retirement Benefits.

Section	Section
500. Legislative Board of Retirement Benefits established	530. Compensation
510. Membership	540. Duties of the board
520. Selection of membership	560. Staff for the board
	570. Definitions

Sec. 24.20.500. Legislative Board of Retirement Benefits established. The Legislative Board of Retirement Benefits is established as a permanent advisory board of the legislature. The legislature establishes the board in recognition of its need for detailed expert fiscal analyses of the retirement systems of the state and recommendations to change them. (§ 1 ch 130 SLA 1977)

Sec. 24.20.510. Membership. The membership of the Legislative Board of Retirement Benefits is composed of seven members:

(1) the commissioner of administration or his designee;

(2) the director of the division of retirement;

(3) an employee of the state employed under the public employees' retirement system (AS 39.35);

(4) an employee of the state or of a school district who is employed under the teachers' retirement system (AS 14.25);

(5) a public member not employed by the state who possesses a background in economics or public finance;

(6) a retired member from the public employees' retirement system; and

(7) a retired member from the teachers' retirement system. (§ 1 ch 130 SLA 1977; am § 1 ch 121 SLA 1978)

Sec. 24.20.065. Examination of regulations and opinions. (a) The legislative council shall annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;

(2) there are court or agency expressions of dissatisfaction with state statutes;

(3) the opinions or regulations indicate unclear or ambiguous statutes.

(b) The legislative council shall submit a comprehensive report of the annual examination with recommendations to the members of the legislature at the start of each regular session. (§ 1 ch 72 SLA 1963)

Sec. 24.20.070. Revision of statutes. (a) The legislature may direct the council to revise the laws of the state in the form of a bulk formal revision. At the direction of the legislature and within the limit of appropriations made, the council may enter into contracts for the printing, annotating, indexing, and distribution of a revision of the laws of the state. The council receives sufficient copies of a revision for exchange with other states and jurisdictions. A revision prepared by the council under authority of this section shall be referred to the legislature for enactment or adoption.

(b) Statute revision is a continuing responsibility of the council. The general and permanent acts of each regular and special session of the legislature shall be integrated with and published as annual supplements to or replacement pamphlets for the Alaska Statutes. (§ 7 ch 17 SLA 1960; am § 5 ch 100 SLA 1963)

Cited in Employment Sec. Comm'n v. Wilson, Sup. Ct. Op. No. 587 (File No. 1084), 461 P.2d 425 (1969).

Sec. 24.20.075. Code Revision Commission. (a) The Code Revision Commission is established as a permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; one public member, who is not an employee of the state government, appointed by the governor; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer, and appointed members serve at the pleasure of the appointing authority. Members receive the standard per diem for board members, or the regular legislative per diem if they are legislators, for days spent on commission business. The

Compensation Board is a quasi-judicial agency, the same criteria for judicial review of any administrative action should apply. Hood v. State, Sup. Ct. Op. No. 1559 (File No. 3289), 574 P.2d 811 (1978).

Article 7. Legislative Review of Rules.

Section
320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review. (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) At the same time a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the chairman of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975; am § 5 ch 64 SLA 1978)

Effect of amendment. The 1978 amendment substituted "At the same time" for "Within 45 days after" at the beginning of subsection (b).

Article 8. Administrative Adjudication.

Section
330. Application of §§ 330 — 630

Sec. 44.62.330. Application of §§ 330 — 630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under §§ 330 — 630 of this chapter. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 330 — 630 of this chapter is limited to named functions of the agency.

(1) Board of Barber Examiners

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

(4) State Board of Registration for Architects, Engineers and Land Surveyors

(5) Repealed by § 13 ch 218 SLA 1976.

(6) Board of Examiners in Optometry

Sec. 24.20.311. Reports. The committee shall file copies of its approved audit reports including any committee recommendations with the governor, the agency concerned and the legislature. An annual report summarizing the audit reports and committee recommendations made during the year shall be filed with the governor and with the legislature within the first five days of each regular session of the legislature. Reports shall be approved by a majority of the committee before their release and shall be open to public inspection after their release to the legislature. (§ 2 ch 95 SLA 1971)

Article 3. Administrative Regulation Review Committee.

Section	Section
400. Administrative Regulation Review Committee established	440. Meetings
410. Membership	445. Power of suspension
420. Term of membership	450. Staff
430. Vacancies	460. Powers

Sec. 24.20.400. Administrative Regulation Review Committee established. The Administrative Regulation Review Committee is established as a permanent interim committee of the legislature. The establishment of the committee recognizes the need for prompt legislative review of administrative regulations filed by the lieutenant governor to determine whether annulment under AS 44.62.320 is appropriate. (§ 1 ch 27 SLA 1975)

Editor's note. — Section 6, ch. 84, SLA 1977 provides: "The Administrative Regulation Review Committee established in AS 24.20.400 — 24.20.460 shall review the administrative regulations adopted by the executive departments of the state government which affect the resources and use of the resources of the state's coastal area. The committee shall, not later than January 20, 1[illegible], make formal recommendation with respect to annulment of regulations adopted which, in the opinion of the committee, fail to implement, interpret or carry out the policies, objectives and standards of the Alaska coastal management program. The recommendations of the committee shall be transmitted to the first regular session of the Eleventh Alaska Legislature." As to the Alaska coastal management program, see AS 46.40.010 et seq. As to the Alaska Coastal Policy Council, see AS 44.19.891 et seq. As to planning assistance for development and maintenance of district coastal management programs, see AS 44.47.095.

Sec. 24.20.410. Membership. The Administrative Regulation Review Committee is composed of three members of the house appointed by the speaker of the house, and three members of the senate appointed by the president of the senate. The membership from each house shall include at least one member from each of the two major political parties. The committee elects a chairman from among its members. (§ 1 ch 27 SLA 1975)

Sec. 24.20.420. Term of membership. The committee shall be organized within 15 days after the organization of each legislature.

Members serve for the duration of the legislature during which they are appointed. If they are reelected or their term of office extends into the next succeeding legislature, they continue to serve until reappointed or the appointment of their successor. (§ 1 ch 27 SLA 1975)

Sec. 24.20.430. Vacancies. When a vacancy occurs in the membership of the committee, the presiding officer of the house incurring the vacancy shall choose a successor. If the office of the president of the senate or speaker of the house of representatives becomes vacant and a vacancy from the affected house occurs among the membership of the committee, the remaining committee members from the house incurring the vacancy shall appoint a new member. (§ 1 ch 27 SLA 1975)

Sec. 24.20.440. Meetings. The Administrative Regulation Review Committee may meet during sessions of the legislature and during the interim between sessions at such times and places in the state as the chairman may determine. Members may receive, for the minimum time required to get to and from meetings and for the period while attending meetings, the same travel and per diem allowances provided by law for members of the legislature when attending sessions, except that members of the committee receive no per diem during legislative sessions other than the per diem allowance paid to other members of the legislature. (§ 1 ch 27 SLA 1975)

Sec. 24.20.445. Power of suspension. (a) When the legislature is not in session, the Administrative Regulation Review Committee may by an affirmative vote of not less than two-thirds of the members of the committee suspend the effectiveness of the adoption of or amendment to a regulation adopted after adjournment of the previous regular session of the legislature, until 30 days after the legislature reconvenes.

(b) The effectiveness of an adoption or amendment of a regulation is suspended on the date a committee report passing in favor of suspension is filed with the lieutenant governor. If an adoption of or amendment to a regulation is not effective on the date a report is filed with the lieutenant governor, the effectiveness of the adoption or amendment which is the subject of the committee's report is suspended from the date the adoption or amendment would otherwise become effective under AS 44.62.180.

(c) No action under (a) of this section may be undertaken unless all interested parties are afforded an opportunity to be heard at a hearing held upon 15 days' notice to those parties.

(d) The provisions of this section do not apply to emergency regulations. (§§ 1, 2 ch 3 SLA 1978)

Revisor's note (1978). — The language of AS 24.20.445(d) was drawn from sec. 2, ch. 3, SLA 1978 and codified as part of AS 24.20.445.

Sec. 24.20.450. Staff. The Legislative Affairs Agency shall provide the committee with professional and clerical assistance under the auspices of the Legislative Council. (§ 1 ch 27 SLA 1975)

Sec. 24.20.460. Powers. The Administrative Regulation Review Committee has the following powers:

(1) to organize and adopt rules for the conduct of its business;

(2) to hold public hearings;

(3) to require all state officials and agencies of state government to give full cooperation to the committee or its staff in assembling and furnishing requested information;

(4) to examine all administrative regulations to determine if they properly implement legislative intent;

(5) to make recommendations for legislative annulment of administrative regulations under AS 44.62.320;

(6) to prepare and distribute reports, memoranda, or other materials. (§ 1 ch 27 SLA 1975)

Article 4. Legislative Board of Retirement Benefits.

Section	Section
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Sec. 24.20.500. Legislative Board of Retirement Benefits established. The Legislative Board of Retirement Benefits is established as a permanent advisory board of the legislature. The legislature establishes the board in recognition of its need for detailed expert fiscal analyses of the retirement systems of the state and recommendations to change them. (§ 1 ch 130 SLA 1977)

Sec. 24.20.510. Membership. The membership of the Legislative Board of Retirement Benefits is composed of seven members:

(1) the commissioner of administration or his designee;

(2) the director of the division of retirement;

(3) an employee of the state employed under the public employees' retirement system (AS 39.35);

(4) an employee of the state or of a school district who is employed under the teachers' retirement system (AS 14.25);

(5) a public member not employed by the state who possesses a background in economics or public finance;

(6) a retired member from the public employees' retirement system; and

(7) a retired member from the teachers' retirement system. (§ 1 ch 130 SLA 1977; am § 1 ch 121 SLA 1978)

Sec. 24.20.065. Examination of regulations and opinions. (a) The legislative council shall annually examine administrative regulations, published opinions of state and federal courts and of the Department of Law that rely on state statutes, and final decisions adopted under the Administrative Procedure Act (AS 44.62) to determine whether or not

(1) the courts and agencies are properly implementing legislative purposes;

(2) there are court or agency expressions of dissatisfaction with state statutes;

(3) the opinions or regulations indicate unclear or ambiguous statutes.

(b) The legislative council shall submit a comprehensive report of the annual examination with recommendations to the members of the legislature at the start of each regular session. (§ 1 ch 72 SLA 1963)

Sec. 24.20.070. Revision of statutes. (a) The legislature may direct the council to revise the laws of the state in the form of a bulk formal revision. At the direction of the legislature and within the limit of appropriations made, the council may enter into contracts for the printing, annotating, indexing, and distribution of a revision of the laws of the state. The council receives sufficient copies of a revision for exchange with other states and jurisdictions. A revision prepared by the council under authority of this section shall be referred to the legislature for enactment or adoption.

(b) Statute revision is a continuing responsibility of the council. The general and permanent acts of each regular and special session of the legislature shall be integrated with and published as annual supplements to or replacement pamphlets for the Alaska Statutes. (§ 7 ch 17 SLA 1960; am § 5 ch 100 SLA 1963)

Cited in Employment Sec. Comm'n v. Wilson, Sup. Ct. Op. No. 587 (File No. 1084), 461 P.2d 425 (1969).

Sec. 24.20.075. Code Revision Commission. (a) The Code Revision Commission is established as a permanent commission of the legislature.

(b) The commission consists of two legislators, one from each house, appointed by the presiding officer; one public member, who is not an employee of the state government, appointed by the governor; a designee of the governor, who is an attorney employed by the executive branch of the state government; a designee of the chief justice of the supreme court; and a designee of the Alaska Bar Association appointed by the board of governors of the association. Legislative members serve at the pleasure of the presiding officer, and appointed members serve at the pleasure of the appointing authority. Members receive the standard per diem for board members, or the regular legislative per diem if they are legislators, for days spent on commission business. The

the cost of machinery or equipment to be used in the operation of the project and expenses of installation, replacement or rehabilitation, and all other costs, charges, fees and expenses which may be determined by the authority to be necessary to finance the construction or acquisition;

(9) "project occupant" means a business enterprise or enterprises proposing to use and occupy a project;

(10) "real property" means land and rights and interests in land, including, without limitation, interests less than full title such as easements, uses, leases, and licenses;

(11) "lease" includes, when used as a noun, an interest in, or when used as a verb, the transfer of an interest in, real property less than fee simple title, including, without limitation, when used as a noun, agreements to use or occupy real property. (§ 1 ch 64 SLA 1967)

Part 5. Administrative Procedure.

Chapter

62. Administrative Procedure Act (§§ 44.62.010 — 44.62.650)

Chapter 62. Administrative Procedure Act.

Article

1. Application and Effect (§§ 44.62.010 — 44.62.030)
2. Submission, Filing and Publication of Regulations (§§ 44.62.040 — 44.62.125)
3. The Alaska Administrative Register and Code (§§ 44.62.130 — 44.62.170)
4. Procedure for Adopting Regulations (§§ 44.62.180 — 44.62.290)
5. Judicial Review (§ 44.62.300)
6. Agency Meetings Public (§§ 44.62.310 — 44.62.312)
7. Legislative Review of Rules (§ 44.62.320)
8. Administrative Adjudication (§§ 44.62.330 — 44.62.630)
9. General Provisions (§§ 44.62.640 — 44.62.650)

Revisor's note (1971). — In this chapter "secretary of state" has been changed to "lieutenant governor" in conformity with the 1970 Alaska constitutional amendment (SJR 2) changing the designation of that office.

Article 1. Application and Effect.

Section

10. Application to State Organization Act of 1959
20. Authority to adopt, administer, or enforce regulations
30. Consistency between regulation and statute

Sec. 44.62.010. Application to State Organization Act of 1959. Rule-making power conferred by ch. 64 SLA 1959 is subject to this chapter. (§ 2(4) art I (ch 1) ch 143 SLA 1959)

Revisor's note. — It is not possible to eliminate the reference to ch 64 SLA 1959 in the above section. The rule-making powers referred to are scattered throughout this revision. However, most of ch 64 SLA 1959 is found in part 2 of this title.

Legislative committee report. — For legislative committee report on original bill, see House Journal (1959), pp. 394-397.

This chapter applies to the Alaska State Housing Authority. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

And its provisions must be adhered to. — There being no express exclusion of Alaska State Housing Authority from the Administrative Procedure Act, ASHA is bound to adhere to the provisions of this chapter. ASHA's separate corporate nature does not detract from this conclusion. The legislature may have had a special reason for choosing the corporate vehicle; e.g., to insulate the state from potential liabilities. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

Not every administrative determination requires that this chapter be followed. Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Cited in Pan American Petroleum Corp. v. Shell Oil Co., Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969); Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973); In re Application of Sullivan, Sup. Ct. Op. No. 1274 (File No. 2783), 551 P.2d 531 (1976).

Am. Jur. references. — 11 Am. Jur., Constitutional Law, §§ 240 to 242; 42 Am. Jur., Public Administrative Law, §§ 8 to 250.

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations. Except for the authority conferred upon the lieutenant governor in §§ 130 — 170 of this chapter, §§ 10 — 320 of this chapter do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (§ 4 art I (ch 1) ch 143 SLA 1959)

Meaning of "in accordance with standards prescribed by other provisions of law." — The words of this section, "in accordance with standards prescribed by other provisions of law," mean nothing more than if standards are prescribed by provisions of law other than those contained in this chapter, then they must be recognized and adhered to. This language does not mean that regulations cannot be validly adopted by an administrative agency "unless" standards have been prescribed. Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Sec. 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. (§ 5 art I (ch 1) ch 143 SLA 1959)

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following

manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.020 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Article 2. Submission, Filing and Publication of Regulations.

Section
40. Submitting regulations
50. Style and forms
60. Preparation and filing
70. Fees
80. Endorsement and file
90. [Repealed]
100. Presumptions from filing
110. Presumptions from publication
120. Voluntary submitting and publication
125. Regulations attorney

Sec. 44.62.040. Submitting regulations. (a) Every state agency which by statute possesses regulation-making authority shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, except one which

(1) establishes or fixes rates, prices or tariffs;

(2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; or

(3) is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

(b) Citation of the general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted under (a) of this section. (§ 1 art II (ch 1) ch 143 SLA 1959; am § 1 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations promulgated under AS 15.15.330, dealing with the early counting of election votes, are not exempt from the requirements of the Administrative Procedure Act (AS 44.62) by operation of this section and AS 44.62.640. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The lieutenant governor's supervision of personnel and activities relating to the conduct of a statewide election is not the same as the management of employees and internal affairs of a state agency. Executive organization of the election machinery goes well beyond the lieutenant governor's control of his own staff and their actions. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

* **Sec. 44.62.050. Style and forms.** The ~~Legislative Affairs Agency~~ Dept. of Law shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under § 40 of this chapter. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969)

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

* **Sec. 44.62.060. Preparation and filing.** (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the ~~Legislative Affairs Agency~~ Dept. of Law under § 50 of this chapter.

(b) In the performance of duties under § 125 of this chapter, the Department of Law shall advise the agencies on legal matters relevant to the promulgation of regulations and may advise the agencies on the need for and the policy involved in particular regulations. In addition, the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine

(1) its legality, constitutionality and consistency with other regulations;

(2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section;

(3) its clarity, simplicity of expression, and absence of possibility of misapplication;

(4) compliance with the drafting manual for administrative regulations.

(c) The lieutenant governor may not accept for filing a regulation, amendment or order of repeal required by § 40 of this chapter unless it is accompanied by the written statement specified in (b) of this section and the statement approves the regulation, amendment or order of repeal. (§ 3 art II (ch 1) ch 143 SLA 1959; am § 1 ch 149 SLA 1962; am § 4 ch 70 SLA 1966; am § 1 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.070. Fees. No state officer or public official may charge a fee to perform an official act in connection with the certification, submission or filing of regulations under §§ 40 — 120 of this chapter. (§ 4 art II (ch 1) ch 143 SLA 1959; am § 2 ch 40 SLA 1969)

Sec. 44.62.080. Endorsement and file. The lieutenant governor shall (1) endorse on the certified copy of each regulation or order of repeal

filed by him, the time and date of filing, and (2) maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection. (§ 5 art II (ch 1) ch 143 SLA 1959; am § 3 ch 40 SLA 1969)

Sec. 44.62.090. Filing with local government unit clerks. Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Sec. 44.62.100. Presumptions from filing. (a) The filing of a certified copy of a regulation or an order of repeal by the lieutenant governor raises the rebuttable presumptions that

(1) it was duly adopted;

(2) it was duly filed and made available for public inspection at the day and hour endorsed on it;

(3) all requirements of this chapter and the regulations relative to the regulation have been complied with;

(4) the text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

(b) The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed. (§ 7 art II (ch 1) ch 143 SLA 1959; am § 4 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

This section establishes a rebuttable presumption that the procedural requirements for the promulgation of administrative regulations have been satisfied. Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.110. Presumptions from publication. (a) The publication of a regulation in the Alaska Administrative Code or register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

(b) The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the Alaska Administrative Code or Alaska Administrative Register. (§ 8 art II (ch 1) ch 143 SLA 1959)

Sec. 44.62.120. Voluntary submitting and publication. With the approval of the lieutenant governor, a state agency may submit to the lieutenant governor for filing a regulation or order of repeal of a regulation not required by § 40 of this chapter to be submitted. If he accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in § 80 of this chapter, and may publish the regulation or order of repeal in the manner he considers proper. (§ 9 art II (ch 1) ch 143 SLA 1959; am § 5 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

As to preparation of regulations to be submitted to the secretary of state pertaining to the prequalification of contractors as a prerequisite for bidding on construction projects, see 1959 Ops. Att'y Gen., No. 27.

Sec. 44.62.125. Regulations attorney. (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the ~~Legislative Affairs Agency~~ under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969)

Editor's note. — Section 4, ch. 58, SLA 1969, provides: "Until the revision of the Alaska Administrative Code under 1967 SCR No. 15 and sec. 2(a), ch. 70 SLA 1966 has been completed, the regulations attorney shall assist the staff of the Legislative Affairs Agency on that project."

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Article 3. The Alaska Administrative Register and Code.

Section
130. Codification and publication
140. Distribution of code and register
150. [Repealed]
160. Date and content of register
170. [Repealed]

Sec. 44.62.130. Codification and publication. The lieutenant governor shall provide for the continuing compilation, codification and publication, with periodic supplements, of all regulations filed by his office, or of appropriate references to any regulations the printing of which he finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application. The publication of compiled regulations is the Alaska Administrative Code. The periodic supplements to it are the Alaska Administrative Register. The code and register shall contain appropriate annotations to judicial decisions and opinions of the Alaska attorney general.

(b) The legislative council shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Alaska Administrative Code. (§ 1 art III (ch 1) ch 143 SLA 1959; am § 1 ch 70 SLA 1966; am § 6 ch 40 SLA 1969)

Revisor's note (1968). — Subsection (b) has been complied with by the publication of the "Drafting Manual for Administrative Regulations" under sec. 2(a), ch. 70, SLA 1966 and AS 44.62.050.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.140. Distribution of code and register. The lieutenant governor shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, and of each supplement to the code or register to the clerk of each local government unit, or if the authority to accept filings on his behalf is delegated, to the person to whom this authority is delegated. (§ 2 art III (ch 1) ch 143 SLA 1959)

Sec. 44.62.150. Price.
Repealed by § 49 ch 127 SLA 1974.

Editor's note. — The repealed section derived from § 3, art. III (ch. 1), ch. 143, SLA 1959.

Sec. 44.62.160. Date and content of register. (a) The Alaska Administrative Register shall be published quarterly on the first day of

the month, beginning in a month to be designated by the Department of Law, but not later than October 1969. All regulations required to be submitted under § 40 of this chapter which are filed by the first day of the month preceding publication shall be published in the register for that quarter.

(b) If during a quarter no regulation, amendment or order of repeal has been filed the regular quarterly register shall be published reflecting that fact. (§ 4 art III (ch 1) ch 143 SLA 1959; am § 3 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.170. Form of publication.
Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Article 4. Procedure for Adopting Regulations.

Section
180. Effective date
190. Notice of proposed action
200. Contents of notice
210. Public proceedings
220. Right to petition
230. Procedure on petition
240. Limitation on retroactive action
250. Emergency regulations
260. Limitation on effective period of emergency regulations
270. State policy
280. Purpose of §§ 180 — 290 of this chapter
290. Limits of the application of §§ 180 — 290 of this chapter

Sec. 44.62.180. Effective date. A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under § 250 of this chapter, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written

instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal. (§ 3 art IV (ch 1) ch 143 SLA 1959; am § 7 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

Commissioner not required to follow article when promulgating order under AS 38.05.180. — The commissioner of natural resources is not required to follow the provisions of this article when promulgating a land classification order under AS 38.05.180. Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July 1964).

Cited in Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent state legislators. + the Legis. Affairs Agency

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under §§ 130 — 290 of this chapter. (§ 5 art IV (ch 1) ch 143 SLA 1959; am § 2 ch 149 SLA 1962; am § 1 ch 3 SLA 1968; am § 16 ch 143 SLA 1968)

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed enactment. When administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administer agencies are constitutional. Kelly v. Zamarello, Sup.

Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Requirements and sufficiency of notice. — There are few cases and little text discussion of the requirements of notice and the sufficiency of notice in proceedings for adoption of rules and regulations. 1959 Op. Att'y Gen., No. 26.

Lengthy regulation to be summarized. — Where a lengthy regulation on one subject is to be proposed the best policy would be to briefly summarize the content and purpose of the regulation. 1959 Op. Att'y Gen., No. 26

But short regulation to be set forth in full. — If only a very short regulation is proposed then ordinarily it would be most practicable to set forth the regulation in full. 1959 Op. Att'y Gen., No. 26.

Procedure upon promulgation of many regulations of varied nature. — Where a great many regulations are to be promulgated which are of a varied nature, such as fish and game regulations, or oil leasing regulations, then the only practical thing to do would be to give a general listing of the subjects to be covered, a reference to any other existing body of regulations which are being adopted, amended or superseded which might be informative to the particular public or industry concerned (such as a reference to existing regulations of a state agency or department or to existing federal regulations) and a brief listing of any significant changes which are proposed if an existing body of regulations is to be effected. In such case it would be well to indicate that copies of the proposed regulations can be obtained from the agency in order to indicate the agency has done everything reasonably possible to give the public affected by its regulations an opportunity to familiarize itself with the regulations and to prepare itself to submit its views at the hearing. This should constitute substantial compliance with the Administrative Procedure Act and would serve the purpose of the act. 1959 Op. Att'y Gen., No. 26.

And when a summary of a large number of proposed regulations is to be used it would be safe for the departments and agencies of the state government to follow the Ohio and federal practice and to give notice of the areas in which regulations may or may not be promulgated by listing the subject matter to which the proposed rules would relate. 1959 Op. Att'y Gen., No. 26.

Public notice referring only to regulation numbers and subject headings. — See 1959 Op. Att'y Gen., No. 26.

For illustrations of the notice required by this section, see 1959 Op. Att'y Gen., No. 26, Exhibits A, B, C and D.

Applied in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.200. Contents of notice. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations.

(b) A regulation which is adopted, amended or repealed may vary in content from the summary specified in (a) (3) of this section if the subject

matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject. (§ 6 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 185 SLA 1970)

Legislative committee report. — For report on ch. 185, SLA 1970 (CSHB 786 am S), see 1970 House Journal, p. 916.

Applied in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Quoted in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.210. Public proceedings. (a) On the date and at the time and place designated in the notice the agency shall give each interested person or his authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally. The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation.

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines. (§ 7 art IV (ch 1) ch 143 SLA 1959)

Difference between hearings under this section and AS 44.62.450. — See 1960 Ops. Att'y Gen., No. 7.

And distinction between "adjudicative facts" and "legislative facts." — See 1960 Ops. Att'y Gen., No. 7.

Article applicable to exercise of quasi-legislative power. — This article sets forth the procedure which must be followed when an agency exercises its quasi-legislative power. 1960 Ops. Att'y Gen., No. 7.

But not to quasi-judicial proceedings. — See 1960 Ops. Att'y Gen., No. 7.

Article 8 of this chapter was intended to be applicable to quasi-judicial proceedings. 1960 Ops. Att'y Gen., No. 7.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 94.

Sec. 44.62.220. Right to petition. Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in §§ 180 — 290 of this chapter. The petition shall state clearly and concisely

(1) the substance or nature of the regulation, amendment, or repeal requested;

(2) the reasons for the request·

(3) reference to the authority of the agency to take the action requested. (§ 8 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation under §§ 180 — 290 of this chapter, a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing under §§ 190 — 210 of this chapter. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of §§ 190 — 210 of this chapter do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form. (§ 9 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.240. Limitation on retroactive action. If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter, which is primarily an "interpretative regulation," has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct. (§ 10 art IV (ch 1) ch 143 SLA 1959)

Cited in Aleut Corp. v. State, Superior Court, 3rd Jud. Dist., C.A. No. 72-2893 (1973).

Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts which constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of §§ 60 and 190 — 210 of this chapter do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after adoption the agency shall give notice of the adoption in accordance with § 190(a) (1) — (6) of

this chapter. Failure to give the required notice by the end of the 10th day automatically repeals the regulation. (§ 2(2) art IV (ch 1) ch 143 SLA 1959; am § 2 ch 45 SLA 1969; am § 1 ch 46 SLA 1972)

Effect of amendment. — The 1972 amendment added the language beginning "however" in the second sentence, and added the last sentence.

Legislative committee reports. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414. For report on ch. 46, SLA 1972 (HB 108 am S), see 1972 House Journal, pp. 265, 512.

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) No regulation adopted as an emergency regulation remains in effect more than 120 days unless the adopting agency complies with §§ 60 and 190 — 210 of this chapter either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that §§ 60 and 190 — 210 of this chapter were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation. (§ 4 art IV (ch 1) ch 143 SLA 1959; am § 3 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.270. State policy. It is the state policy that emergencies are held to a minimum and are rarely found to exist. (§ 2(2) art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.280. Purpose of §§ 180 — 290 of this chapter. It is the purpose of §§ 180 — 290 of this chapter to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in § 250 of this chapter, §§ 180 — 290 of this chapter apply to the exercise of quasi-legislative power conferred by a statute, but nothing in §§ 180 — 290 of this chapter repeals or diminishes additional requirements imposed by the statute. Sections 180 — 290 of this chapter are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly. (§ 1 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.290. Limits of the application of §§ 180 — 290 of this chapter. (a) Sections 180 — 290 of this chapter do not apply to a regulation not required to be submitted to the lieutenant governor under §§ 10 — 320 of this chapter.

(b) Only this section and § 180 of this chapter apply to

(1) a regulation which prescribes the organization or procedure of an agency, or

(2) Repealed by § 4 ch 45 SLA 1969. (§ 2(1) art IV (ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 26, 27.

Article 5. Judicial Review.

Section
300. Court review

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to compy with §§ 10 — 320 of this chapter, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under § 250 of this chapter. (§ 1 art V (ch 1) ch 143 SLA 1959)

Judicial review from nonadjudicatory legislative action is provided in the Administrative Procedure Act under this section, which section specifically provides for declaratory relief, but not for a statute of limitations on actions. Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

In the past the supreme court has departed from a restrictive interpretation of the standing requirement. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Standing may be allowed one without direct interest in outcome. — The need for review in certain cases may make it desirable to allow standing to one whose primary interest is not in the direct outcome of the administrative action, but in its competitive effect on his economic interest. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Registered voters held "interested persons" to challenge election regulations. — Residents and registered voters held to possess standing as "interested persons" under the Administrative Procedure Act (AS 44.62) to challenge the regulations promulgated by the lieutenant governor under AS 15.15.330, dealing with early counting of election votes. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Denial of standing to registered voters would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The distinction between legislative and interpretative rule making is a helpful one when reviewing regulations adopted by state administrative agencies. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The difference in judicial attitude toward certain administrative rules has been characterized as a distinction between "legislative regulations" and "interpretative regulations." "Legislative rule" has been defined as "the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body." "Interpretative rules" are rules which do not rest upon a legislative grant of power (whether explicit or inexplicit) to the agency to make law. The distinction is not always easy to draw, since interpretative

rules sometimes rest upon statutory authority to issue them. The distinction can be demonstrated better by examining representative cases than by an abstract definition. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Two distinct types of administrative decisions on questions of law are recognized. One type involves questions in which the particularized experience and knowledge of the administrative personnel goes into the determination. When this type of question is presented to the court for review, deference should be given to the administrative interpretation, since the expertise of the agency would be of material assistance to the court. The amount of deference will vary depending upon the apparent degree of reasonableness of the administrative decision and the degree to which the problem involves knowledge peculiar to an industry, business, etc. The other kind of case presents questions of law in which knowledge and experience in the industry affords little guidance toward a proper consideration of the legal issues. These cases usually concern statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience. Consequently, courts are at least as capable of deciding this kind of question as an administrative agency. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P. 2d 906 (1971).

Manner of review. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Scope of review. — When a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, the supreme court should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review generally. — AS 44.62.020 and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

"Reasonable basis" standard of review. — See Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach, in the review of agency action which is essentially executive in character, recognizes that the application of law to facts in an administrative setting may require techniques quite different from those traditionally associated with judicial functions. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Stated in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960); Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 186 to 250.

the cost of machinery or equipment to be used in the operation of the project and expenses of installation, replacement or rehabilitation, and all other costs, charges, fees and expenses which may be determined by the authority to be necessary to finance the construction or acquisition;

(9) "project occupant" means a business enterprise or enterprises proposing to use and occupy a project;

(10) "real property" means land and rights and interests in land, including, without limitation, interests less than full title such as easements, uses, leases, and licenses;

(11) "lease" includes, when used as a noun, an interest in, or when used as a verb, the transfer of an interest in, real property less than fee simple title, including, without limitation, when used as a noun, agreements to use or occupy real property. (§ 1 ch 64 SLA 1967)

Part 5. Administrative Procedure.

Chapter

62. Administrative Procedure Act (§§ 44.62.010 — 44.62.650)

Chapter 62. Administrative Procedure Act.

Article

1. Application and Effect (§§ 44.62.010 — 44.62.030)
2. Submission, Filing and Publication of Regulations (§§ 44.62.040 — 44.62.125)
3. The Alaska Administrative Register and Code (§§ 44.62.130 — 44.62.170)
4. Procedure for Adopting Regulations (§§ 44.62.180 — 44.62.290)
5. Judicial Review (§ 44.62.300)
6. Agency Meetings Public (§§ 44.62.310 — 44.62.312)
7. Legislative Review of Rules (§ 44.62.320)
8. Administrative Adjudication (§§ 44.62.330 — 44.62.630)
9. General Provisions (§§ 44.62.640 — 44.62.650)

Revisor's note (1971). — In this chapter "secretary of state" has been changed to "lieutenant governor" in conformity with the 1970 Alaska constitutional amendment (SJR 2) changing the designation of that office.

Article 1. Application and Effect.

Section

10. Application to State Organization Act of 1959
20. Authority to adopt, administer, or enforce regulations
30. Consistency between regulation and statute

Sec. 44.62.010. Application to State Organization Act of 1959. Rule-making power conferred by ch. 64 SLA 1959 is subject to this chapter. (§ 2(4) art I (ch 1) ch 143 SLA 1959)

Revisor's note. — It is not possible to eliminate the reference to ch 64 SLA 1959 in the above section. The rule-making powers referred to are scattered throughout this revision. However, most of ch 64 SLA 1959 is found in part 2 of this title.

Legislative committee report. — For legislative committee report on original bill, see House Journal (1959), pp. 394-397.

This chapter applies to the Alaska State Housing Authority. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

And its provisions must be adhered to. — There being no express exclusion of Alaska State Housing Authority from the Administrative Procedure Act, ASHA is bound to adhere to the provisions of this chapter. ASHA's separate corporate nature does not detract from this conclusion. The legislature may have had a special reason for choosing the corporate vehicle; e.g., to insulate the state from potential liabilities. Alaska State Housing Auth. v. Dixon, Sup. Ct. Op. No. 793 (File No. 1529), 496 P.2d 649 (1972).

Not every administrative determination requires that this chapter be followed. Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Cited in Pan American Petroleum Corp. v. Shell Oil Co., Sup. Ct. Op. No. 553 (File No. 918), 455 P.2d 12 (1969); Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973); In re Application of Sullivan, Sup. Ct. Op. No. 1274 (File No. 27? [illegible] 51 P.2d 531 (1976).

Am. Jur. refe[illegible]. — 11 Am. Jur., Constitutional Law, §§ 240 to 242; 42 Am. Jur., Public Administrative Law, §§ 8 to 250.

Sec. 44.62.020. Authority to adopt, administer, or enforce regulations. Except for the authority conferred upon the lieutenant governor in §§ 130 — 170 of this chapter, §§ 10 — 320 of this chapter do not confer authority upon or augment the authority of a state agency to adopt, administer, or enforce a regulation. To be effective, each regulation adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law. (§ 4 art I (ch 1) ch 143 SLA 1959)

Meaning of "in accordance with standards prescribed by other provisions of law." — The words of this section, "in accordance with standards prescribed by other provisions of law," mean nothing more than if standards are prescribed by provisions of law other than those contained in this chapter, then they must be recognized and adhered to. This language does not mean that regulations cannot be validly adopted by an administrative agency "unless" standards have been prescribed. Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Sec. 44.62.030. Consistency between regulation and statute. If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, no regulation adopted is valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute. (§ 5 art I (ch 1) ch 143 SLA 1959)

Judicial review of administrative regulation. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following

manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review. — This section and AS 44.62.020 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Article 2. Submission, Filing and Publication of Regulations.

Section
40. Submitting regulations
50. Style and forms
60. Preparation and filing
70. Fees
80. Endorsement and file
90. [Repealed]
100. Presumptions from filing
110. Presumptions from publication
120. Voluntary submitting and publication
125. Regulations attorney

Sec. 44.62.040. Submitting regulations. (a) Every state agency which by statute possesses regulation-making authority shall submit to the lieutenant governor for filing a certified original and one duplicate copy of every regulation or order of repeal adopted by it, except one which

(1) establishes or fixes rates, prices or tariffs;

(2) relates to the use of public works, including streets and highways, under the jurisdiction of a state agency if the effect of the order is indicated to the public by means of signs or signals; or

(3) is directed to a specifically named person or to a group of persons and does not apply generally throughout the state.

(b) Citation of the general statutory authority under which a regulation is adopted, as well as citation of specific statutory sections being implemented, interpreted or made clear, shall follow the text of each regulation submitted under (a) of this section. (§ 1 art II (ch 1) ch 143 SLA 1959; am § 1 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 915.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations promulgated under AS 15.15.330, dealing with the early counting of election votes, are not exempt from the requirements of the Administrative Procedure Act (AS 44.62) by operation of this section and AS 44.62.640. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The lieutenant governor's supervision of personnel and activities relating to the conduct of a statewide election is not the same as the management of employees and internal affairs of a state agency. Executive organization of the election machinery goes well beyond the lieutenant governor's control of his own staff and their actions. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

* **Sec. 44.62.050. Style and forms.** The Legislative Affairs Agency shall prepare and shall revise when necessary a drafting manual for administrative regulations which prescribes the style and forms for submitting regulations under § 40 of this chapter. (§ 2 art II (ch 1) ch 143 SLA 1959; am § 3 ch 70 SLA 1966; am § 1 ch 57 SLA 1969) *

See AS Supplement

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

* **Sec. 44.62.060. Preparation and filing.** (a) Every state agency which by statute possesses regulation-making authority shall work with the Department of Law, under § 125 of this chapter, in the preparation and revision of its regulations and shall adhere to the drafting manual for administrative regulations prepared by the Legislative Affairs Agency under § 50 of this chapter.

See AS Supplement

(b) In the performance of duties under § 125 of this chapter, the Department of Law shall advise the agencies on legal matters relevant to the promulgation of regulations and may advise the agencies on the need for and the policy involved in particular regulations. In addition, the department shall prepare a written statement of approval or disapproval after each regulation has been reviewed in order to determine

(1) its legality, constitutionality and consistency with other regulations;

(2) the existence of statutory authority and the correctness of the required citation of statutory authority following each section;

(3) its clarity, simplicity of expression, and absence of possibility of misapplication;

(4) compliance with the drafting manual for administrative regulations.

(c) The lieutenant governor may not accept for filing a regulation, amendment or order of repeal required by § 40 of this chapter unless it is accompanied by the written statement specified in (b) of this section and the statement approves the regulation, amendment or order of repeal. (§ 3 art II (ch 1) ch 143 SLA 1959; am § 1 ch 149 SLA 1962; am § 4 ch 70 SLA 1966; am § 1 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.070. Fees. No state officer or public official may charge a fee to perform an official act in connection with the certification, submission or filing of regulations under §§ 40 — 120 of this chapter. (§ 4 art II (ch 1) ch 143 SLA 1959; am § 2 ch 40 SLA 1969)

Sec. 44.62.080. Endorsement and file. The lieutenant governor shall (1) endorse on the certified copy of each regulation or order of repeal

filed by him, the time and date of filing, and (2) maintain a permanent file of the certified copies of regulations and orders of repeal for public inspection. (§ 5 art II (ch 1) ch 143 SLA 1959; am § 3 ch 40 SLA 1969)

Sec. 44.62.090. Filing with local government unit clerks. Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Sec. 44.62.100. Presumptions from filing. (a) The filing of a certified copy of a regulation or an order of repeal by the lieutenant governor raises the rebuttable presumptions that

(1) it was duly adopted;

(2) it was duly filed and made available for public inspection at the day and hour endorsed on it;

(3) all requirements of this chapter and the regulations relative to the regulation have been complied with;

(4) the text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

(b) The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed. (§ 7 art II (ch 1) ch 143 SLA 1959; am § 4 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

This section establishes a rebuttable presumption that the procedural requirements for the promulgation of administrative regulations have been satisfied. Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.110. Presumptions from publication. (a) The publication of a regulation in the Alaska Administrative Code or register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

(b) The courts shall take judicial notice of the contents of each regulation or notice of the repeal of a regulation printed in the Alaska Administrative Code or Alaska Administrative Register. (§ 8 art II (ch 1) ch 143 SLA 1959)

Sec. 44.62.120. Voluntary submitting and publication. With the approval of the lieutenant governor, a state agency may submit to the lieutenant governor for filing a regulation or order of repeal of a regulation not required by § 40 of this chapter to be submitted. If he accepts the regulation or order of repeal, the lieutenant governor shall endorse and file it as required in § 80 of this chapter, and may publish the regulation or order of repeal in the manner he considers proper. (§ 9 art II (ch 1) ch 143 SLA 1959; am § 5 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

As to preparation of regulations to be submitted to the secretary of state pertaining to the prequalification of contractors as a prerequisite for bidding on construction projects, see 1959 Ops. Att'y Gen., No. 27.

* **Sec. 44.62.125. Regulations attorney.** (a) In the Department of Law a particular attorney, called the regulations attorney, shall be assigned, as his primary responsibility, the functions relating to the handling of administrative regulations.

See AS Supplement

(b) The department shall

(1) advise all state administrative agencies of the nature and use of administrative regulations;

(2) alert the agencies to statutes that need to be implemented, interpreted or made clear by regulation;

(3) continually review the regulations, make recommendations to the respective agencies concerning deficiencies, conflicts and obsolete provisions in and the need for reorganization or revision of the regulations, and prepare regulations to be promulgated by the agencies, correcting or removing the deficiencies, conflicts and obsolete provisions;

(4) work with all administrative agencies possessing regulation-making power in drafting all new regulations, advising the agencies of legal problems encountered and ensuring compliance with the drafting manual for administrative regulations prepared by the Legislative Affairs Agency under § 50 of this chapter;

(5) assist the agencies in holding public hearings under § 210 of this chapter;

(6) to the extent necessary after regulations have been filed by the lieutenant governor, edit and revise them for consolidation into the Alaska Administrative Code in the manner provided for the revisor of statutes in AS 01.05.031;

(7) draft bills for consideration by the governor to transfer matter which should be statutory law from the Alaska Administrative Code to the Alaska Statutes and to clarify agency regulatory power when clarification is needed. (§ 2 ch 58 SLA 1969)

Editor's note. — Section 4, ch. 58, SLA 1969, provides: "Until the revision of the Alaska Administrative Code under 1967 SCR No. 15 and sec. 2(a), ch. 70 SLA 1966 has been completed, the regulations attorney shall assist the staff of the Legislative Affairs Agency on that project."

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Article 3. The Alaska Administrative Register and Code.

Section
130. Codification and publication
140. Distribution of code and register
150. [Repealed]
160. Date and content of register
170. [Repealed]

Sec. 44.62.130. Codification and publication. The lieutenant governor shall provide for the continuing compilation, codification and publication, with periodic supplements, of all regulations filed by his office, or of appropriate references to any regulations the printing of which he finds to be impractical, such as detailed schedules or forms otherwise available to the public, or which are of limited or particular application. The publication of compiled regulations is the Alaska Administrative Code. The periodic supplements to it are the Alaska Administrative Register. The code and register shall contain appropriate annotations to judicial decisions and opinions of the Alaska attorney general.

(b) The legislative council shall prescribe a uniform system of indexing, numbering, arrangement of text and citation of authority and history notes for the Alaska Administrative Code. (§ 1 art III (ch 1) ch 143 SLA 1959; am § 1 ch 70 SLA 1966; am § 6 ch 40 SLA 1969)

Revisor's note (1968). — Subsection (b) has been complied with by the publication of the "Drafting Manual for Administrative Regulations" under sec. 2(a), ch. 70, SLA 1966 and AS 44.62.050.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Sec. 44.62.140. Distribution of code and register. The lieutenant governor shall supply a complete set of the Alaska Administrative Code, and of the Alaska Administrative Register, and of each supplement to the code or register to the clerk of each local government unit, or if the authority to accept filings on his behalf is delegated, to the person to whom this authority is delegated. (§ 2 art III (ch 1) ch 143 SLA 1959)

Sec. 44.62.150. Price.
Repealed by § 49 ch 127 SLA 1974.

Editor's note. — The repealed section derived from § 3, art. III (ch. 1), ch. 143, SLA 1959.

Sec. 44.62.160. Date and content of register. (a) The Alaska Administrative Register shall be published quarterly on the first day of

the month, beginning in a month to be designated by the Department of Law, but not later than October 1969. All regulations required to be submitted under § 40 of this chapter which are filed by the first day of the month preceding publication shall be published in the register for that quarter.

(b) If during a quarter no regulation, amendment or order of repeal has been filed the regular quarterly register shall be published reflecting that fact. (§ 4 art III (ch 1) ch 143 SLA 1959; am § 3 ch 58 SLA 1969)

Legislative committee report. — For report on ch. 58, SLA 1969 (HB 18 am), see 1969 House Journal, p. 412.

Sec. 44.62.170. Form of publication.
Repealed by § 2 ch 57 SLA 1969.

Legislative committee report. — For report on ch. 57, SLA 1969 (HB 19 am S), see 1969 House Journal, p. 413.

Article 4. Procedure for Adopting Regulations.

Section
180. Effective date
190. Notice of proposed action
200. Contents of notice
210. Public proceedings
220. Right to petition
230. Procedure on petition
240. Limitation on retroactive action
250. Emergency regulations
260. Limitation on effective period of emergency regulations
270. State policy
280. Purpose of §§ 180 — 290 of this chapter
290. Limits of the application of §§ 180 — 290 of this chapter

Sec. 44.62.180. Effective date. A regulation or an order of repeal filed by the lieutenant governor becomes effective on the 30th day after the date of filing unless

(1) otherwise specifically provided by the statute under which the regulation or order of repeal is adopted, in which event it becomes effective on the day prescribed by the statute;

(2) it is a regulation prescribing the organization or procedure of an agency, in which event it becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal;

(3) it is an emergency regulation or order of repeal adopted under § 250 of this chapter, in which case the finding and the statement of the facts constituting the emergency shall be submitted to the lieutenant governor, together with the emergency regulation or order of repeal, which, in that event only, becomes effective upon filing by the lieutenant governor or upon a later date specified by the state agency in a written

instrument submitted with, or as part of, the regulation or order of repeal;

(4) a later date is prescribed by the state agency in a written instrument submitted with, or as part of, the regulation or order of repeal. (§ 3 art IV (ch 1) ch 143 SLA 1959; am § 7 ch 40 SLA 1969)

Legislative committee report. — For report on ch. 40, SLA 1969 (HB 21 am S), see 1969 House Journal, p. 415.

Commissioner not required to follow article when promulgating order under AS 38.05.180. — The commissioner of natural resources is not required to follow the provisions of this article when promulgating a land classification order under AS 38.05.180. Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July 1964).

Cited in Mukluk Freight Lines v. Nabors Alas. Drilling, Inc., Sup. Ct. Op. No. 967 (File No. 1870), 516 P.2d 408 (1973).

Sec. 44.62.190. Notice of proposed action. (a) At least 30 days before the adoption, amendment, or repeal of a regulation, notice of the proposed action shall be

(1) published in the newspaper of general circulation, or trade or industry publication, which the state agency prescribes;

(2) mailed to every person who has filed a request for notice of proposed action with the state agency;

(3) if the agency is within a department, mailed or delivered to the commissioner of the department;

(4) when appropriate in the judgment of the agency, (A) mailed to a person or group of persons whom the agency believes is interested in the proposed action, and (B) published in the additional form and manner the state agency prescribes;

(5) furnished the Department of Law together with a copy of the proposed regulation, amendment, or order of repeal for the department's use in preparing the opinion required after adoption and before filing by § 60 of this chapter;

(6) furnished to all incumbent state legislators.

(b) If the form or manner of notice is prescribed by statute, in addition to the requirements of filing and mailing notice under this chapter, the notice shall be published, posted, mailed, filed or otherwise publicized as prescribed by the statute.

(c) The failure to mail notice to a person as provided in this section does not invalidate an action taken by an agency under §§ 180 — 290 of this chapter. (§ 5 art IV (ch 1) ch 143 SLA 1959; am § 2 ch 149 SLA 1962; am § 1 ch 3 SLA 1968; am § 16 ch 143 SLA 1968)

The rule-making function of an administrative agency frequently resembles the legislative process of passing a statute. Each entity determines the need for a particular enactment in light of chosen policies; each has procedures for the expression of views upon the merits of the proposal; and each, after consideration of the relevant policies and arguments, decides whether to adopt the proposed enactment. When administrative rule making is based upon clear authority from the legislature to formulate policy in the adoption of regulations, the rule-making activity takes on a quasi-legislative aspect. Under proper standards, such delegations of legislative power to administer agencies are constitutional. Kelly v. Zamarello, Sup.

Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Requirements and sufficiency of notice. — There are few cases and little text discussion of the requirements of notice and the sufficiency of notice in proceedings for adoption of rules and regulations. 1959 Op. Att'y Gen., No. 26.

Lengthy regulation to be summarized. — Where a lengthy regulation on one subject is to be proposed the best policy would be to briefly summarize the content and purpose of the regulation. 1959 Op. Att'y Gen., No. 26

But short regulation to be set forth in full. — If only a very short regulation is proposed then ordinarily it would be most practicable to set forth the regulation in full. 1959 Op. Att'y Gen., No. 26.

Procedure upon promulgation of many regulations of varied nature. — Where a great many regulations are to be promulgated which are of a varied nature, such as fish and game regulations, or oil leasing regulations, then the only practical thing to do would be to give a general listing of the subjects to be covered, a reference to any other existing body of regulations which are being adopted, amended or superseded which might be informative to the particular public or industry concerned (such as a reference to existing regulations of a state agency or department or to existing federal regulations) and a brief listing of any significant changes which are proposed if an existing body of regulations is to be effected. In such case it would be well to indicate that copies of the proposed regulations can be obtained from the agency in order to indicate the agency has done everything reasonably possible to give the public affected by its regulations an opportunity to familiarize itself with the regulations and to prepare itself to submit its views at the hearing. This should constitute substantial compliance with the Administrative Procedure Act and would serve the purpose of the act. 1959 Op. Att'y Gen., No. 26.

And when a summary of a large number of proposed regulations is to be used it would be safe for the departments and agencies of the state government to follow the Ohio and federal practice and to give notice of the areas in which regulations may or may not be promulgated by listing the subject matter to which the proposed rules would relate. 1959 Op. Att'y Gen., No. 26.

Public notice referring only to regulation numbers and subject headings. — See 1959 Op. Att'y Gen., No. 26.

For illustrations of the notice required by this section, see 1959 Op. Att'y Gen., No. 26, Exhibits A, B, C and D.

Applied in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.200. Contents of notice. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include

(1) a statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation;

(2) reference to the authority under which the regulation is proposed and a reference to the particular code section or other provisions of law which are being implemented, interpreted, or made specific;

(3) an informative summary of the proposed subject of agency action;

(4) other matters prescribed by a statute applicable to the specific agency or to the specific regulation or class of regulations.

(b) A regulation which is adopted, amended or repealed may vary in content from the summary specified in (a) (3) of this section if the subject

matter of the regulation remains the same and the original notice was written so as to assure that members of the public are reasonably notified of the proposed subject of agency action in order for them to determine whether their interests could be affected by agency action on that subject. (§ 6 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 185 SLA 1970)

Legislative committee report. — For report on ch. 185, SLA 1970 (CSHB 786 am S), see 1970 House Journal, p. 916.

Applied in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Quoted in College Enterprises, Inc. v. State, 6 Alaska L.J. No. 2, p. 35 (Feb., 1968).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Sec. 44.62.210. Public proceedings. (a) On the date and at the time and place designated in the notice the agency shall give each interested person or his authorized representative, or both, the opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present them orally. The state agency shall consider all relevant matter presented to it before adopting, amending or repealing a regulation.

(b) At a hearing under this section the agency or its authorized representative may administer oaths or affirmations, and may continue or postpone the hearing to the time and place which it determines. (§ 7 art IV (ch 1) ch 143 SLA 1959)

Difference between hearings under this section and AS 44.62.450. — See 1960 Ops. Att'y Gen., No. 7.

And distinction between "adjudicative facts" and "legislative facts." — See 1960 Ops. Att'y Gen., No. 7.

Article applicable to exercise of quasi-legislative power. — This article sets forth the procedure which must be followed when an agency exercises its quasi-legislative power. 1960 Ops. Att'y Gen., No. 7.

But not to quasi-judicial proceedings. — See 1960 Ops. Att'y Gen., No. 7.

Article 8 of this chapter was intended to be applicable to quasi-judicial proceedings. 1960 Ops. Att'y Gen., No. 7.

Regulations adopted by the Commissioner of Natural Resources are subject to the rule-making provisions of the Administrative Procedure Act (AS 44.62) and must be adopted according to the procedures set forth therein. Among the required procedures for adoption of regulations are notice of the proposed adoption, a public hearing in which any interested person may submit statements to the agency, filing of the regulation, if adopted, with the secretary of state, and publication. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 94.

Sec. 44.62.220. Right to petition. Unless the right to petition for adoption of a regulation is restricted by statute to a designated group or the procedure for the petition is prescribed by statute, an interested person may petition an agency for the adoption or repeal of a regulation as provided in §§ 180 — 290 of this chapter. The petition shall state clearly and concisely

(1) the substance or nature of the regulation, amendment, or repeal requested;

(2) the reasons for the request;

(3) reference to the authority of the agency to take the action requested. (§ 8 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.230. Procedure on petition. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation under §§ 180 — 290 of this chapter, a state agency shall, within 30 days, deny the petition in writing or schedule the matter for public hearing under §§ 190 — 210 of this chapter. However, if the petition is for an emergency regulation, and the agency finds that an emergency exists, the requirements of §§ 190 — 210 of this chapter do not apply, and the agency may submit the regulation to the lieutenant governor immediately after making the finding of emergency and putting the regulation into proper form. (§ 9 art IV (ch 1) ch 143 SLA 1959; am § 1 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.240. Limitation on retroactive action. If a regulation adopted by an agency under this chapter is primarily legislative, the regulation has prospective effect only. A regulation adopted under this chapter, which is primarily an "interpretative regulation," has retroactive effect only if the agency adopting it has adopted no earlier inconsistent regulation and has followed no earlier course of conduct inconsistent with the regulation. Silence or failure to follow any course of conduct is considered earlier inconsistent conduct. (§ 10 art IV (ch 1) ch 143 SLA 1959)

Cited in Aleut Corp. v. State, Superior Court, 3rd Jud. Dist., C.A. No. 72-2893 (1973).

Sec. 44.62.250. Emergency regulations. A regulation or order of repeal may be adopted as an emergency regulation or order of repeal if a state agency makes a written finding, including a statement of the facts which constitute the emergency, that the adoption of the regulation or order of repeal is necessary for the immediate preservation of the public peace, health, safety, or general welfare. The requirements of §§ 60 and 190 — 210 of this chapter do not apply to the initial adoption of emergency regulations; however, upon adoption of an emergency regulation the adopting agency shall immediately submit a copy of it to the lieutenant governor for filing and for publication in the Alaska Administrative Register, and within five days after adoption the agency shall give notice of the adoption in accordance with § 190(a) (1) — (6) of

this chapter. Failure to give the required notice by the end of the 10th day automatically repeals the regulation. (§ 2(2) art IV (ch 1) ch 143 SLA 1959; am § 2 ch 45 SLA 1969; am § 1 ch 46 SLA 1972)

Effect of amendment. — The 1972 amendment added the language beginning "however" in the second sentence, and added the last sentence.

Legislative committee reports. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414. For report on ch. 46, SLA 1972 (HB 108 am S), see 1972 House Journal, pp. 265, 512.

Sec. 44.62.260. Limitation on effective period of emergency regulations. (a) No regulation adopted as an emergency regulation remains in effect more than 120 days unless the adopting agency complies with §§ 60 and 190 — 210 of this chapter either before submitting the regulation to the lieutenant governor or during the 120-day period.

(b) Before the expiration of the 120-day period, the agency shall transmit to the lieutenant governor for filing a certification that §§ 60 and 190 — 210 of this chapter were complied with before submitting the regulation to the lieutenant governor, or that the agency complied with those sections within the 120-day period. Failure to so certify repeals the emergency regulation; it may not be renewed or refiled as an emergency regulation. (§ 4 art IV (ch 1) ch 143 SLA 1959; am § 3 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Sec. 44.62.270. State policy. It is the state policy that emergencies are held to a minimum and are rarely found to exist. (§ 2(2) art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.280. Purpose of §§ 180 — 290 of this chapter. It is the purpose of §§ 180 — 290 of this chapter to establish basic minimum procedural requirements for the adoption, amendment or repeal of administrative regulations. Except as provided in § 250 of this chapter, §§ 180 — 290 of this chapter apply to the exercise of quasi-legislative power conferred by a statute, but nothing in §§ 180 — 290 of this chapter repeals or diminishes additional requirements imposed by the statute. Sections 180 — 290 of this chapter are not superseded or modified by subsequent legislation except to the extent that the legislation does so expressly. (§ 1 art IV (ch 1) ch 143 SLA 1959)

Sec. 44.62.290. Limits of the application of §§ 180 — 290 of this chapter. (a) Sections 180 — 290 of this chapter do not apply to a regulation not required to be submitted to the lieutenant governor under §§ 10 — 320 of this chapter.

(b) Only this section and § 180 of this chapter apply to

(1) a regulation which prescribes the organization or procedure of an agency, or

(2) Repealed by § 4 ch 45 SLA 1969. (§ 2(1) art IV (ch 1) ch 143 SLA 1959; am § 17 ch 143 SLA 1968; am § 8 ch 40 SLA 1969; am § 4 ch 45 SLA 1969)

Legislative committee report. — For report on ch. 45, SLA 1969 (HB 20 am S), see 1969 House Journal, p. 414.

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ [illegible], 27.

Article 5. Judicial Review.

Section
300. Court review

Sec. 44.62.300. Court review. An interested person may get a judicial declaration on the validity of a regulation by bringing an action for declaratory relief in the superior court. In addition to any other ground the court may declare the regulation invalid (1) for a substantial failure to compy with §§ 10 — 320 of this chapter, or (2) in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency under § 250 of this chapter. (§ 1 art V (ch 1) ch 143 SLA 1959)

Judicial review from nonadjudicatory legislative action is provided in the Administrative Procedure Act under this section, which section specifically provides for declaratory relief, but not for a statute of limitations on actions. Moore v. State, Sup. Ct. Op. No. 1284 (File Nos. 2551, 2587), 553 P.2d 8 (1976).

In the past the supreme court has departed from a restrictive interpretation of the standing requirement. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Standing may be allowed one without direct interest in outcome. — The need for review in certain cases may make it desirable to allow standing to one whose primary interest is not in the direct outcome of the administrative action, but in its competitive effect on his economic interest. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Registered voters held "interested persons" to challenge election regulations. — Residents and registered voters held to possess standing as "interested persons" under the Administrative Procedure Act (AS 44.62) to challenge the regulations promulgated by the lieutenant governor under AS 15.15.330, dealing with early counting of election votes. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

Denial of standing to registered voters would have the effect of unduly limiting the possibility of a popular check upon executive control of the election process. Coghill v. Boucher, Sup. Ct. Op. No. 900 (File No. 1798), 511 P.2d 1297 (1973).

The distinction between legislative and interpretative rule making is a helpful one when reviewing regulations adopted by state administrative agencies. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The difference in judicial attitude toward certain administrative rules has been characterized as a distinction between "legislative regulations" and "interpretative regulations." "Legislative rule" has been defined as "the product of an exercise of legislative power by an administrative agency, pursuant to a grant of legislative power by the legislative body." "Interpretative rules" are rules which do not rest upon a legislative grant of power (whether explicit or inexplicit) to the agency to make law. The distinction is not always easy to draw, since interpretative

rules sometimes rest upon statutory authority to issue them. The distinction can be demonstrated better by examining representative cases than by an abstract definition. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Two distinct types of administrative decisions on questions of law are recognized. One type involves questions in which the particularized experience and knowledge of the administrative personnel goes into the determination. When this type of question is presented to the court for review, deference should be given to the administrative interpretation, since the expertise of the agency would be of material assistance to the court. The amount of deference will vary depending upon the apparent degree of reasonableness of the administrative decision and the degree to which the problem involves knowledge peculiar to an industry, business, etc. The other kind of case presents questions of law in which knowledge and experience in the industry affords little guidance toward a proper consideration of the legal issues. These cases usually concern statutory interpretation or other analysis of legal relationships about which courts have specialized knowledge and experience. Consequently, courts are at least as capable of deciding this kind of question as an administrative agency. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P. 2d 906 (1971).

Manner of review. — Where an administrative regulation has been adopted in accordance with the procedures set forth in the Administrative Procedure Act, and it appears that the legislature has intended to commit to the agency discretion as to the particular matter that forms the subject of the regulation, the supreme court will review the regulation in the following manner: First, it will ascertain whether the regulation is consistent with and reasonably necessary to carry out the purposes of the statutory provisions conferring rule-making authority on the agency. This aspect of review insures that the agency has not exceeded the power delegated by the legislature. Second, the supreme court will determine whether the regulation is reasonable and not arbitrary. This latter inquiry is proper in the review of any legislative enactment. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Scope of review. — When a regulation has been adopted under a delegation of authority from the legislature to the administrative agency to formulate policies and to act in the place of the legislature, the supreme court should not examine the content of the regulation to judge its wisdom, but should exercise a scope of review not unlike that exercised with respect to a statute. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Standard of review generally. — AS 44.62.020 and AS 44.62.030 provide guidance as to the standard of review for regulations adopted pursuant to an administrative agency's quasi-legislative rule-making function. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

"Reasonable basis" standard of review. — See Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach should be used for the most part in cases concerning administrative expertise as to either complex subject matter or fundamental policy formulations. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Application of the reasonable basis test is extremely useful where the administrative action under review resembles executive as opposed to legislative or judicial activity. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

The reasonable basis approach, in the review of agency action which is essentially executive in character, recognizes that the application of law to facts in an administrative setting may require techniques quite different from those traditionally associated with judicial functions. Kelly v. Zamarello, Sup. Ct. Op. No. 705 (File Nos. 1255, 1256), 486 P.2d 906 (1971).

Stated in Kingery v. Chapple, Sup. Ct. Op. No. 858 (File No. 1554), 504 P.2d 831 (1972).

Cited in Boehl v. Sabre Jet Room, Inc., Sup. Ct. Op. No. 3 (File No. 17), 349 P.2d 585 (1960); Bradley v. State, 2 Alaska L.J. No. 6, p. 88 (June-July, 1964).

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, §§ 186 to 250.

Article 6. Agency Meetings Public.

Section
310. Agency meetings public
312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;

(3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

(e) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

Effect of amendments. — The first 1972 amendment inserted "a legislative body or" in the first sentence of subsection (a) and substituted "clearly have an adverse effect upon" for "adversely affect" in subsection (c)(1).

The second 1972 amendment inserted "a board of regents or of" near the beginning of subsection (a).

The 1976 amendment added the second and third sentences of subsection (a).

Legislative committee reports. — For legislative committee report on ch. 78, SLA 1968 (SB 395), see House Journal (1968), p. 707. For report on ch 7, SLA 1969 (HB 32), see 1969 House Journal, p. 142. For report on ch 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158. For report on ch. 100, SLA 1972 (CSHB 605 am), see 1972 House Journal, p. 643.

Am. Jur. reference. — 42 Am. Jur., Public Administrative Law, § 94.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in § 310(a) of this chapter exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) Section 310(c)(1) of this chapter shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

Revisor's note (1972). — AS 44.62.312(a) is based on Cal. Gov't C.A., sec. 54950.

Legislative committee report. — For report on ch. 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158.

Article 7. Legislative Review of Rules.

Section

320. Legislative annulment of regulations and review

Sec. 44.62.320. Legislative annulment of regulations and review. (a) The legislature, by a concurrent resolution adopted by a vote of both houses, may annul a regulation of an agency or department.

(b) Within 45 days after a regulation is filed by the lieutenant governor, the lieutenant governor shall submit the regulation to the

chairman of the Administrative Regulation Review Committee for review under AS 24.20.400 — 24.20.460. (§ 1 art VII (ch 1) ch 143 SLA 1959; am § 3 ch 149 SLA 1962; am § 2 ch 72 SLA 1963; am § 2 ch 27 SLA 1975)

Effect of amendment. — The 1975 amendment added subsection (b).

Article 8. Administrative Adjudication.

Section
330. Application of §§ 330 — 630
340. Delegation of power by agencies
350. Appointment of hearing officers
360. Accusation
370. Statement of issues
380. Service of accusation
390. Notice of defense
400. Amended or supplemental accusation
410. Time and place of hearing
420. Form of notice of hearing
430. Subpoena
440. Depositions
450. Hearings
460. Evidence rules
470. Evidence by affidavit
480. Official notice
490. Amendment of accusation after submission
500. Decision in a contested case
510. Form and effect of decision
520. Effective date of decision
530. Default
540. Reconsideration
550. Petition for reinstatement or reduction of penalty
560. Judicial review
570. Scope of review
580. Continuances
590. Contempt
600. Mail vote
610. Charge
620. Power to administer oaths
630. Impartiality

Sec. 44.62.330. Application of §§ 330 — 630. (a) The procedure of the state boards, commissions, and officers listed in this subsection or of their successors by reorganization under the constitution shall be conducted under §§ 330 — 630 of this chapter. This procedure, including, but not limited to, accusations and statements of issues, service, notice and time and place of hearing, subpoenas, depositions, matters concerning evidence and decisions, conduct of hearing, judicial review and scope of judicial review, continuances, reconsideration, reinstatement or reduction of penalty, contempt, mail vote, oaths, impartiality, and similar matters shall be governed by this chapter, notwithstanding similar provisions in the statutes dealing with the state boards, commissions, and officers listed. Where indicated, the procedure that shall be conducted under §§ 330 — 630 of this chapter is limited to named functions of the agency.

(1) Board of Barber Examiners

(2) Board of Chiropractic Examiners

(3) Board of Dental Examiners

(4) State Board of Registration for Architects, Engineers and Land Surveyors

FIRE
SEASON
REGS.

Alaska State Legislature

SENATOR
DON BENNETT
BOX 2601
FAIRBANKS, ALASKA 99707

Senate

LEGISLATIVE ADDRESS
POUCH V - STATE CAPITOL
JUNEAU, ALASKA 99811

May 3, 1980

Ms. Loretta Nistler, Editor
The Delta Paper
P.O. Box 988
Delta Junction, Alaska 99737

Dear Ms. Nistler:

I am writing in response to your letter of April 28, to Senator Sackett, regarding the Department of Natural Resources' proposed fire season regulations.

Recently, I contacted Commissioner Le Resche's office with inquiry as to the status of these regulations. As of this date, the regulations are being held in abeyance, along with the Timber Practices regulations, until the Department has had a chance to meet with interested legislators sometime before the end of the legislative session.

As Chairman of the Administrative Regulation Review Committee, I am extremely concerned over the amount of unnecessary regulations being created and promulgated by the various departments of state and federal government. I am certainly in agreement with you that the new fire season regulations are again another example of the "over zealous" interference into our traditional Alaskan lifestyle, that has unfortunately become in many cases the rule, instead of the exception. Please be assured, that I plan to do everything I can to see that these, and other similar overbearing regulations are not adopted.

In closing, I appreciate the opportunity to respond to you, and hopefully will be able to assist you with this problem. I will keep Senator Sackett's office appraised of the status on this matter, as I work with the Department for an acceptable resolution. Please contact me if I can be of further assistance.

Sincerely,

Don Bennett

DB:sl
cc: Senator Sackett

January 28, 1980

The Honorable Robert LeResche
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner LeResche:

This is in regards to recent numerous complaints and apprehensions which I have received from many of my constituents regarding the new fire season regulations now being promulgated by the Department.

Much of the input I have received from the Interior Region of the State concerns the enactment of these regulations without adequate public hearing for those individuals who will directly be affected by these new restrictions. An additional concern lies with the feeling that the Administration is not adequately considering the Alaskan lifestyle by the adoption of these regulations.

My own feeling is that the new fire season regulations are perhaps an overzealous "knee-jerk" reaction to last summer's Delta fire situation. Hopefully your Department and the Governor are not inadvertently rejecting the long-standing traditions and practices of the Alaskan life-style by placing these somewhat overbearing restrictions on many Alaskan residents. Further, it would seem that the old regulations are adequate to control fire hazards related to factors outside natural causes. For speaking from my area of the State, in that many summer fires in the Interior are sparked by lightening, I can see no regulation of any kind that can prevent fires of this nature from occurring.

Please know that I feel there is a need for some regulation to control fire hazards, but to burden Alaskan residents with additional restrictions within their daily lives seems contrary to the lifestyle we have attempted to promote.

In closing, I would appreciate receiving your comments and justifications regarding the new fire season regulations. Thank you for your assistance.

Sincerely,

Senator Don Bennett

cc: The Honorable Jay S. Hammond
Ted Smith, Director
Division of Forest, Land & Water Management

January 29, 1980

Mr. and Mrs. Gordon Mereness
Box 1114
Delta Junction, Alaska 99737

Dear Mr. and Mrs. Mereness:

I am in receipt of your telegram of January 23, regarding your objection to the new fire regulations being imposed without public hearing by the Department of Natural Resources.

Please know that I share your concerns relating to these regulations with special interest as to how they will affect the Interior Region of our State.

I thank you for your comments and will contact both Governor Hammond and Commissioner LeResche in support of your objections.

Sincerely,

Don Bennett

TELEGRAM

ALASCOM, INC.
PHONE: 586-1442
JUNEAU, AK 9[illegible]2

1980 JAN 23 PM 1 15

#

12020 POM TDFA DELTA ALASKA 15 01-23 1030A AST

PMS SENATOR DEON BENNETT

JUN 1980

STRENOUSLY OBJECT NEW FIRE SEASON REGULATIONS WITHOUT HEARING

IN OUR AREA TELL LERESCHE

GORDON AND LINDA MERENESS

BOX 1144 DELTA JCT 99737 -

January 29, 1980

Mr. and Mrs. Paul Nistler
P. O. Box 952
Delta Junction, Alaska 99737

Dear Mr. and Mrs. Nistler:

I am in receipt of your telegram of January 23, informing me of your objections regarding the new fire season regulations soon to be adopted by the Department of Natural Resources.

As a Senator from the Interior Region, I am especially concerned of how these regulations will affect our area of the State. Please know that I am in strong support of your position, and will be sure to communicate your interests to both the Governor and Commissioner LeResche.

Please contact me if I can be of further assistance to your with this matter.

Sincerely,

Don Bennett

Respond

TELEGRAM

ALASCOM, INC.
PHONE 586-6442
JUNEAU, AK 99802

#

12038 IDFA POM FAIRBANKS ALASKA 15 01-23 1105A AST

PMS DON BENNETT

SENATOR 1028

JUN

STRONGLY OBJECT FIRE SEASON REGULATIONS BEING ADOPTED SOON.

NO NOTICE NO LOCAL HEARING. STOP LARESCHE

PAUL AND LORETTA NISTLER

PO BOX 952

DELTA JCT 99737

1980 JAN 25 PM 2 27

support your position
Contacting Governor on this
please contact Gov. Hammond
+ Comm. La Resche w/ your concerns

January 31, 1980

Mr. Donald J. May
4545 Wood River Drive
airbanks, Alaska 99701

Dear Mr. May:

Thank you for your letter and attached information of January 16, regarding the newly proposed mining regulations.

After reviewing your testimony which you presented at the Natural Resources Public hearing, I can certainly understand your concerns. As a person who has been involved in mining in the past, I share your dismay over the restrictions that these regulations would impose on the mining industry. Rest assured, that I will look into the regulations which you cited and see if something can be done to modify them.

Mr. May, I thank you for bringing this matter to my attention, and will do whatever I can to assist you. Please contact me if I can be of further assistance to you.

Sincerely,

Don Bennett

Polar Construction and Mining
4545 WOOD RIVER DRIVE
FAIRBANKS, ALASKA 99701

1/16/80

HON. STATE SENATOR JOHN BENNET:
JUNEAU, ALASKA

DEAR SIR:

PLEASE TAKE A MINUTE, CONSIDER THIS TESTIMONY GIVEN TO MR. TED SMITH AT THE PUBLIC HEARING IN FAIRBANKS LAST NIGHT.

MIGHT YOUR TIME SERVING US IN JUNEAU BE PROSPEROUS AND PROGRESSIVE THIS YEAR.

THANK YOU VERY MUCH.

RESPECTIVELY YOURS.

Donald D Mang

ALASKA MINERS ASSOCIATION, INC.

FAIRBANKS BRANCH

PRESIDENT
Dr.Richard Swainbank
Box 81315
Fairbanks. Alaska 99701

VICE PRESIDENT
Donald J. May
4545 Woodriver Dr.
Fairbanks , Alaska 99701

SECRETARY
Fred Heflinger
409 Clara St
Fairbanks, Alaska 99701

TREASURER
Donald R. Stein
105 Dunbar Av.
Fairbanks , Alaska

January 15, 1980

State of Alaska
Department of Natural Resources
Public Hearing
Fairbanks, Alaska
c/o Mr. Ted Smith, Director

Dear Mr. Smith:

As Vice Chairman of the Alaska Miners' Association, I have been asked to be a spokesman pertaining to the new proposed regulations which confront us tonight.

First: It's strange indeed that you choose to push regulations upon us with such short notice, in the middle of the winter, with less than a month's notice to defend our life's work and investments which can and could be wiped out with such broad and sweeping powers, that you now as our civil servants possess. Are you fearful to appear directly to the Miners' Association to reason why such changes are necessary? Not one of us on the executive board was informed of such changes pertaining to the mining industry which confront us tonight. These hearings were listed and broadcast this past week locally, for this one night here in Fairbanks under "Forest Resources and Practices" when actually by accident we found out that they were covering proposed mining and mineral resource recovery and development regulations. They deal directly with land use permits which are so restrictive that they even monitor the placement of mechanical equipment, as well as the use of explosives which are under your jurisdiction and authority. Are we

not free to choose what we should and need to use as we see fit without stopping the operation and coming to town?

In many cases this would involve traveling many hundreds of miles to obtain a restrictive permit. This is neither prudent nor progressive, but rather it could be labeled authoritarianism, socialism, or the opposite of free enterprise.

Without getting too involved in all these proposed draft regulations, I would like to consider page 2, Section 11 AAC 65.030. I ask you in all honesty, how can a miner not "cause disturbance or harm to the land or related natural resources"? Who is to say? What one director says can be ignored by a successor, or made more harsh by another. Mining must disturb the land to be effective. This is only common sense. Now if we had the time, we could go further and elaborate on "occupying a cabin, moving or operating equipment, bonding, reporting requirements," or Section 11 AAC 65,210 regarding "Duration," which is so broad and elusive that a director could interpret it to mean a miner or mining company has only 10 years to work a claim. In actuality, most large mining companies require at least 10 years from discovery to full production. Who is going to fool with such a requirement that limits permit life? Industry just goes elsewhere, and so do the jobs that might be generated. Without the development of our resources, this town

would pass through severe economic reverses. I hope you are aware of the number of foreclosures that are an will continue in the near future in Fairbanks. During the past 12 months there are 5 to 6 thousand fewer people living in the Fairbanks North Star Borough, and that doesn't sound like "sensible, sustained growth" to me as the campaign slogans stated, and it's been over 2 years since the pipeline was completed.

Please allow me to pass on my own forecast for this area, based on 30 years' residency (if that adds any authority to what I say). Fairbanks and Interior Alaska will continue to decline over the next few years, due to the lack of a stable economic base. The bureaucrats will increase from a fat state treasury until the day comes that they have eaten themselves out of these fat jobs. In other words, Prudhoe Bay is forecasted to decline to a third of what it is producing today, and so will state oil revenues by 1985.

If we look to the future with a desire to help this area with a stable economic base, we must rejuvenate mining, the deep hard rock mining holds great potential throughout the interior. These proposed draft regulations will only stall or further hinder this basic industry. The Alaska Miners' Association goes on record as completely being in disagreement and in opposition to these oppressive rules which are only the desire of a small percentage of the populace, and if enacted will curtail the small miner businessman now, and stall the large potential mines later.

I hope you gentlemen who have the present, yet temporary position of mandating regulations realize that when the pendulum swings back to a more informed and knowledgeable electorate than appears to be the case here tonight because of some unknown haste, I dare say this electorate will register complete contempt at the polls for such stifling treatment as the proposed regulations.

Sincerely yours,

Donald J. May
4545 Wood River Drive
Fairbanks, Alaska 99701

xc: Honorable Governor Jay Hammond
Honorable Lt. Governor Terry Miller
State Senators and State Representatives
Fairbanks Daily News-Miner
All Alaska Weekly

DESC.

MATERIAL

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Alaska State Legislature
Administrative Regulation Review Committee
Senator Don Bennett, Chairman
Nerland Building, Suite 219
545 Third Avenue
Fairbanks, Alaska 99701

If you're seeing red over red tape . . .

we'd like to hear from you.

Dear Alaskan,

You can do something besides rage about excessive state regulations. You can rage at us. Use this short survey card (postage paid) to tell us about outdated, unnecessary rules and regulations that are shortening your temper, life or efficiency. We are the Alaska State Legislature's Administrative Regulation Review Committee. We're waiting to hear from you.

Committee members are Sen. Don Bennett (Chairman), Fairbanks; Rep. Oral E. Freeman (Vice Chairman), Ketchikan; Sen. M. "Ed" Dankworth, Anchorage; Rep. M.F. "Mike" Beirne, Anchorage; Sen. George Hohman, Bethel; and Rep. Charlie Parr, Fairbanks. Our job is to find out if the bureaucracy is hindering instead of helping you. We can help...if you help us by filling out the short card and dropping it in the mail.

Sincerely,

Your Administrative Regulation Review Committee Members

Area of residence _____

_____

Government Office/Position

_____

_____

Do you know of state regulations causing stress or hardship? Please explain.

_____

_____

_____

_____

_____

_____

_____

If you would like to hear back from us about the problem, please print your name and address here.

_____

_____

_____

Detach here! 

Drop in the mail!

Thanks For Helping!

MISC.

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

October 11, 1979

Senator Don Bennett
and members
Administrative Regulation Review Committee
Box 2801
Fairbanks, Alaska 99707

Dear Senator Bennett:

The enclosed packet was prepared for the Executive Regulation Reform Effort. We thought you and the members of your committee might also be interested.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF/PM:rj
Encl.

Ombudsman

MEMO

Date: September 28, 1979

To: Bill McConkey

From: Frank Flavin

Subject: REGULATION REFORM EFFORT

Last May, Diane LeResche asked that this office participate in your regulatory reform effort. We agreed to review our complaint files of the last four years in search of cases evidencing unnecessary, too restrictive, or duplicate regulations. This commitment has proven ambitious, and we admit that our review was not exhaustive.

We had anticipated finding many "problem" regulations. Instead, our complaints more frequently resulted from "problem" statutes, or at least their interpretation and administration. Likewise we have found misapplication of regulatory requirements.

And, probably the last thing you want to hear, our complaints have often resulted from the lack of regulations or written procedures where they are statutorily required or should be required.

Through Ombudsman recommendations we have been able to remedy some of these deficiencies and what we believe to be misapplication of requirements. The listing below includes regulations which continue to be a problem, for one reason or another, and areas which we think ought to be covered by APA regulations. We realize that this isn't exactly what you asked for, but perhaps our input can be used in conjunction with that provided by affected agencies.

11 AAC 16.030 requires people who want to use a geiger counter or metal detector on state park/historical site areas to get a permit. However, to be eligible for a permit, one must be a registered archeologist, according to the Division of Parks. (A79-0808)

3 AAC 33.060 and .100 require (indirectly) that firewood be sold only by the cord or percentage of a cord, as interpreted by Weights and Measures. (A79-0846)

5 AAC 81.055 (5) requires that persons applying for one sheep hunt cannot apply for another sheep hunt--even if that person did not get selected (by lottery, for example) to participate in the first hunt. (A79-0779)

12 AAC 60.030 allows for the granting of reciprocity to psychologists holding licenses in other states. This regulation is rarely used. It builds expectations for reciprocity that is seldom granted. (A79-0848)

12 AAC 80.010-060 requires that barbers be licensed through the Barber Board. The entire function of this Board could be eliminated with no disservice to the public. These sections allow too much subjective discretion to the Board. (A78-1427)

11 AAC 72.100 requires that persons using 5,000 gallons or more of water per day to get a water appropriation permit. The agency administering this regulation is backlogged by thousands of permit applications going back five years and is not currently enforcing the application requirement. (A79-0303)

17 AAC 40.220 requires that the commissioner of DOT approve all expansions and improvements of airports and landing fields. This regulation results in after the fact rubber stamp approval. (77-1818)

5 AAC 60.030 (a) (4) defines areas where fishing is permitted at the junction of two bodies of fresh water. This definition is based on intersection marks which are not easily determined by the fishing public. There is a different definition used to distinguish where fishing is permitted when salt water confluences are involved. (A79-0684) (see attachment #1)

8 AAC 77.005-905 provides for state inspection of elevators. The Municipality of Anchorage has the same authority and inspections have been duplicated. (A79-0678)

17 AAC 40.320 (b) defines classes of airport land use. (A78-1184) (see attachment #2)

11 AAC 20.010 allows for use of firearms in state parks but this conflicts (perhaps) with Fish and Game's regulation of hunting (A79-0950) and (A78-1000) (see attachment #3)

5 AAC 06.341 sets the maximum length of Bristol Bay fishing vessels. It is our finding that the regulation, as written, is ambiguous. (A78-1299) (A79-0647) (see attachment #4)

11 AAC 54.300 concerns procedures in land disposals. (A78-1420) (see attachment #5)

11 AAC 86.130 is a mining regulation which does not require the submission of recorded copies of documents. It does require submission of copies of recorded documents. We believe that the Division is requiring in practice more than the regulation requires. (A78-0899) (see attachment #6)

8 AAC 85.200 (b) (4) is an unemployment regulation which apparently conflicts with federal CETA regulations. (A79-0113) (see attachment #7)

12 AAC 24 - these regulations do not contain provisions for manicurists, demonstrators or consultants, school owners, owner only shops, or owner-operators. (J79-0037)

13 AAC 08 - these motor vehicle regulations need to define methods by which one can show financial responsibility. (J79-0113)

7 AAC 48.100 and 7 AAC 48.180--in our complaint the fair hearing appeal process took 215 days. (J79-0126)

19 AAC 05 and 19 AAC 10 - these Local Boundary Commission regulations are vague and permissive. For example, what is a "valid public purpose" in 19 AAC 05.010? At 19 AAC 10.120 the department may recommend and at 140 the majority may decide. 19 AAC 10.150 seems to allow too much discretion to the Commission in waiving regulatory requirements. (J78-0369) (J79-0041) (J79-0042) (J79-0064)

19 AAC 35.120 (4) - this senior citizen property tax exemption regulation has been interpreted narrowly through guidelines rather than on an individual case basis. (A79-0788)

Additional Regulations Necessary

ASHA appeal procedures differ depending on source of funding for individual projects--federal, state, or combined. Often project managers cannot advise aggrieved tenants of which procedure to use. (J79-0194)

There are no state medicaid regulations although the agency is developing a policy manual to be used in conjunction with federal regulations.

Professional Services Contract regulations are part of the Administrative Manual and, as such, the Attorney General's office has found them to be guidelines only. (J78-0367 et al)

The Division of Pioneer Benefits has no APA regulations for the Pioneer Homes or Longevity Bonus programs. Longevity Bonus is specifically exempted from APA requirements by AS 47.45.160. It is our feeling that both of these programs directly affect the public so should be subject to APA. We would expect more reasonable policies were the regulated to communicate with the regulators.

The Division of Retirement and Benefits, in this office's opinion, has frequently interpreted its statutory authority in a questionable manner. When queried, the Division has obtained a legal opinion upholding its application of the law based on consistent past administrative practice. The PERS and TRS Boards infrequently issue regulations, but these are not under APA procedures. We believe the Division of Retirement and Benefits ought to be subject to the Administrative Procedures Act.

Attachment #8 speaks to the need for regulations as a stop-gap solution concerning Occupational Licensing's release of bonds and cash or other acceptable negotiable security in lieu thereof. (A79-0181, A79-0165, A79-0688)

And lastly, attachment #9 concerns a complaint about Day Care Assistance. Our complainant asked that this information be sent to you. (77-1421)

rj
Attachments

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

August 23, 1979

Re: Ombudsman Complaint A79-0684
(Closed)

Please be advised the above-captioned complaint, alleging that the Department of Public Safety's Fish and Wildlife Protection Division improperly closed the Yetna River for King Salmon fishing on June 16, has been fully investigated.

As my assistant earlier explained to you, Fish and Wildlife Protection Officers John Knudson and Joe Campbell patrolled the confluence of the Yetna River and Lake Creek that day. Lake Creek was open for King Salmon fishing; Yetna River was not. The agency officers were operating under state regulation 5 AAC 60.030 (a) (4), which allowed fishermen to fish just that area of the Yetna that was a direct line across the Yetna from both banks of Lake Creek. The regulation (as correctly interpreted by Officers Campbell and Knudsen) restricted fishing on the Yetna to the area shown in figure A, on the attached diagram.

In explaining this to the 200 fishermen on the Yetna bank with you, both officers felt the regulation unfair. They informed all the fishermen of the same legal restrictions on where people could fish that day. Officers Campbell and Knudsen reported that almost all the other fishermen moved to locations where they could legally fish.

However, upon returning to Anchorage, the two informed their supervisor (Lt. Wayne Fleeks) of the problem encountered. The agency then requested the Board of Fish consider substituting the fresh water regulatory definition with the one determining where fresh water intersects with salt water. As the water color in fresh water/salt water confluences is easily marked, the definition of those confluences is different in state regulations. Those regulatons (5 AAC 72.040 (8) provide for fishing in waters colored the same as the inflowing waterway as shown in figure B on the attached diagram.

Attachment #1

As the water coloring of Lake Creek is detectably different than Yetna River, even though both are fresh water, the agency felt it could ask the Board of Fish to substitute the latter definition. The Board of Fish expeditiously approved the change for Lake Creek and Yetna River, providing for fishing on the Yetna as outlined in figure C on the attached diagram.

Hence, when your acquaintance went back to the Yetna River shortly after June 16, he was given the new regulation interpretation of where he could legally fish on the Yetna.

We find the agency acted correctly when its officers told you fishing on the Yetna was prohibited. However, your basic complaint was partially justified, as even the agency saw the unfairness of restricting the fishing to just the bank-to-bank area. Since the agency remedied the basic unfairness, we believe no recommendation from us is warranted. Thanks to the agency actions, we further find the complaint partially rectified: the basic unfairness was corrected. Thank you for bringing this matter to our attention.

Sincerely,

for Frank Flavin
Ombudsman

FF/CA/jm

Attachment

FIGURE A

Black Areas: proper areas for fishing pursuant to 5 AAC 60.030 (a) (4)

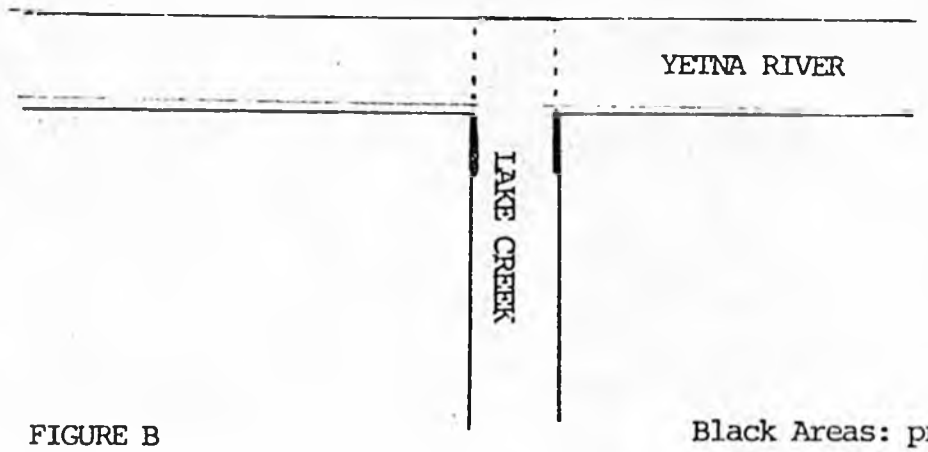


FIGURE B

Black Areas: proper areas for fishing pursuant to 5 AAC 72.040 (8)
Dotted Areas: Color of water more similiar to Lake Creek than Yetna.

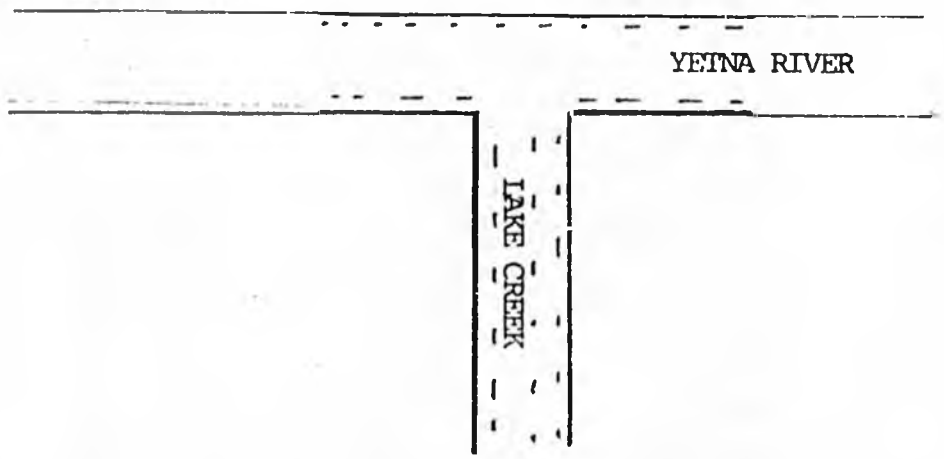
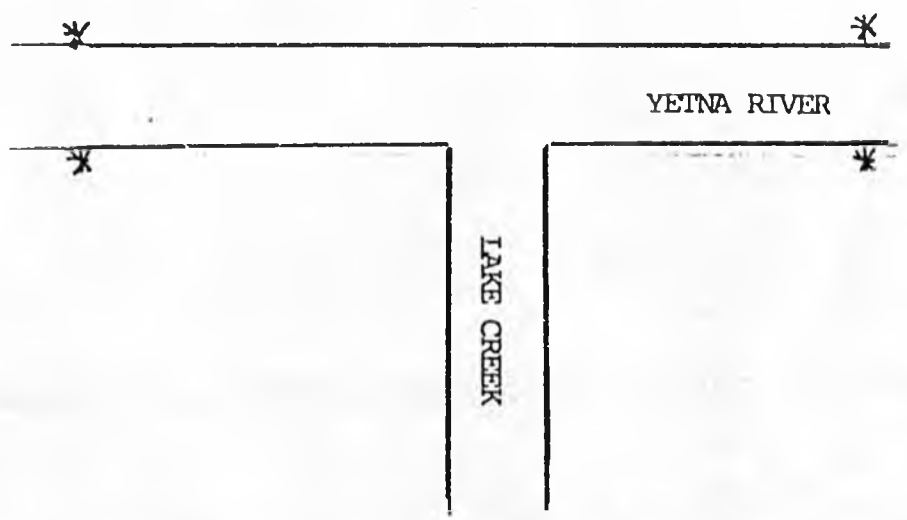


FIGURE C

* F & W Protection Markers



Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

September 29, 1978

Dick Chitty, Director
Division of Lands, Leasing, Right-of-Way
and State Equipment
Department of Transportation
Pouch Z
Juneau, Alaska 99811

Re: Ombudsman Complaint A78-1184
(Pending)

Dear Mr. Chitty:

Please be advised that the above-referenced complaint, alleging that the Department improperly leased land at the Anchorage International Airport to the Alaska National Bank of the North, has been investigated. We find the complaint to be justified.

DOT POSITION:

Your September 4 letter to Steve Pavish states, "The Planning Division was consulted regarding the resolution of the Anchorage International Airport Master Plan Advisory Committee. We are advised that the planned usage by the bank for this specific piece of property is not incompatible with the master plan being developed. 'The center is totally dependent on data arriving on scheduled aircraft as well as on the bank's leased aircraft' according to Alaska National Bank of the North. Please process the lease in the normal fashion."

The Department argues that this lease was for an auxiliary aviation prupose and, therefore, non-controversial according to sound land use planning. Mr. Head's memo to you of September 6 states:

> "The general area in which this lease has been filed is recommended to have a land classification of 'aviation support' activities . . .'Aviation support' . . . reserves the land for any enterprise with a requirement for interfacing with air carriers . . . The needs of the Alaska Bank of the North were sufficiently compelling for the Lands and Leasing division to classify them as 'auxiliary aviation' . . . Once this decision was reached, the proposed location became non-controversial from the standpoint of the planned land use classification . . . this was an exercise of judgement within the realm of management . . ."

ATTACHMENT #2

The Department correctly published and posted the legal notice of Bank of the North's application to lease State airport lands for 45 years at a rate of $.08 per square foot, and allowed for public comment. The legal ad stated that a hearing would be held on the lease application if the Department received twenty written requests. Since less than this number of written objections were received, the lease was signed by the State on September 5.

OMBUDSMAN FINDINGS:

1. The Bank of the North lease for a data processing center was improperly justified as an "auxiliary" aviation use.

14 AAC 10.320(b) defines classes of land uses. (2) states:
"auxiliary" such as taxicab service; rent-a-car agency; cocktail lounge; gift shop; barber shop; cafe; skytel; hotel-motel; newsstand; insurance sales; arcade; and generally any business or service not included in "aviation function" which is located and operated for the convenience of the air-transient public and employees necessary to the maintenance and operation of the airport;

Section (3) defines "non-aviation" uses.
such as grocery store; cafe; liquor store; lumber yard; agriculture; golf course; automobile service station; shopping center; bowling alley; and generally any business or service not normally related to aviation or the air-transient public and which does not offer a product or service normally used by the air-transient public and which is located and operated to derive its income in major part from the general public;

By no stretch of the imagination can a data processing center for bank records be considered an "auxiliary" aviation use under the definitions in these regulations which are currently in effect. Mr. Head's reference to "aviation support" uses which have a requirement for interfacing with air carriers bears no resemblance to regulatory definitions of alternative land uses. It is not management's prerogative to designate types of use which conflict with legal regulations. Further, the legal notice on this lease stated it was for non-aviation purposes.

2. By improperly classifying this as an auxiliary aviation lease, the Department subverted its regulations which restrict issuance of non-aviation leases.

14 AAC 10.320(c)(3) reads in part:
Leases for non-aviation use. Such non-aviation use of the airport lands as may be permitted by the division

> may not interfere with the safe and normal operation of the airport; may not violate state or federal laws; and may be permitted only upon lands or facilities not immediately needed for aviation functions, auxiliary purposes, or for expansion or development purposes, and leases or permits which allow such non-aviation use may not extend beyond the time during which such lands or facilities can reasonably be expected to be unnecessary for expansion or development purposes.

By incorrectly justifying this as an auxiliary aviation lease, DOT staff contends that the requirements in this regulation need not be met. However, since the data processing center can only meet regulatory definitions of a non-aviation use, the requirements above do apply. According to Mr. Head's memo referenced above, the airport land involved in the Bank of the North lease "is recommended to have a land classification of 'aviation support' activities". Clearly, therefore, the Department has violated the restrictions in 14 AAC 10.320(c)(3).

3. By improperly classifying this as an auxiliary aviation lease and deeming it, therefore, non-controversial and by strictly interpreting legal notice provisions regarding requests for public hearing, the Department did not allow adequate public input on issuance of this lease and did not afford adequate weight to the input received.

Since this lease can be defined only as non-aviation, and since it was granted on lands generally classified as "aviation support" because "much of the surrounding land is irretrievably committed to leases of this nature", it must be considered controversial and, as such, should certainly have gone to public hearing.

The Department has argued that less than twenty written objections were received during the public comment period. The Department has failed to consider that each of the seven signers of Resolution 8/9-1 of the Anchorage International Airport Master Plan Advisory Committee represent a special interest relating to the airport. Each signed not as an individual, but as representative of a group of individuals who objected to the lease. The objection of seven organizations should be sufficient justification for a public hearing.

Further, since this lease application quite obviously had master plan land use implications, the written objection of the Master Plan Advisory Committee should have carried more weight. The Department argues that this group does not constitute a public forum and that "no source presently exists for ongoing public input on the airport." Nevertheless, this Advisory Committee is the only established external review mechanism on which the Department can call.

4. The lease to Bank of the North for a data processing center was issued at an unlawfully low rate.

A January 28, 1976 letter from Attorney General Cross to Commissioner Harris states ". . . it was brought to our attention that rentals at the airport are substantially below fair market value. Under the law, the property must be leased at market value. AS 2.15.090; 14 AAC 10. 340. A lease at less than market value is unalwful, and arguably, the lessee owes the State the difference between his actual rental and the actual value."

On June 12, 1976, Commissioner Harris responded, "We are sure you can appreciate the fact that a complete state-wide conversion to a fair market value system of airport land leasing would be an extremely costly endeavor . . . We are, therefore, initiating a program where leases for non-aviation land uses on Anchorage and Fairbanks International Airports will be issued on a fair market value basis. The program will call for the respective lease applicants to hire, at their own expense, an appraiser approved by the Division of Aviation. The appraiser's report would then be used as the basis of the lease rental. We believe this program will permit us to begin a fair market value rental system at a minimum of expense to the state."

Again, in a response to me on September 30, 1976, Commissioner Harris stated "Your recommendation has been reviewed and tentative conclusions reached. Leases for non-aviation uses will be appraised and leased at the greater of either the lot's appraised fair market value or a certain specified minimum amount."

I don't believe we need to belabor this further.

5. The Bank of the North lease application received preferential treatment by the Department.

We note a written comment that the Lease Application Review Committee received instructions from you on June 19 (six days after the lease application was received) to issue the lease as soon as possible per Commissioner Harris, Pat Ryan, and Jim O'Sullivan.

We note also an August 7 letter from Stephen Pavish to Mr. Elton E. Engstrom, President of Engstrom Brothers Company, which states in pertinent part "The fish operation as proposed (in Engstrom's lease application) is incompatible with sound airport planning and development in that land on the airport is in critical short supply . . . We, therefore, must hold available land for operations which must have an airport location. In the case of your proposed fish operation,

the time for transportation between the plane and the processing plant appears to be such that the product leaving a plane by trucks can equally well move to a processing station located off the airport."

In our view, the Chief of Airport Leasing correctly rejected this application for a non-aviation use of airport lands. We cannot understand, however, how the time for transportation between the plane and the data processing center could be any more vital than the time required to transport fish. We can only conclude that, had there not apparently been a "management" decision to call the Bank of the North lease "auxiliary", and had there not apparently been instructions from top management in the Department from the outset to process this application as quickly as possible, the disposition of this lease application might well have been different.

In response to a Legislative Audit recommendation that DOT develop comprehensive revenue plan for Anchorage International Airport, the Department responded in June, 1977 ". . . if the 'Division of Aviation' should foster sound economic conditions in air commerce among the air carriers in the public interest and promote adequate economical and efficient service by air carriers and promote reasonable charges without unjust discrimination, undue preferences, or disadvantages and unfair or destructive competitive practices, then the 'Division of Aviation' has done a commendable job of preserving the integrity of the operation."

While the Department was referring here to philosophical questions regarding lease rates for aviation purposes, the subject complaint makes us wonder how commendable a job of preserving the integrity of the operation the Department is now doing.

RECOMMENDATIONS:

Despite the auxiliary/non-aviation improprieties listed as findings, we are not recommending cancellation of this lease. I have noted with interest just how fast the Bank of the North data processing center is being constructed.

Two recommendations have resulted from this complaint, however:

1. DOT should immediately contact the Bank of the North, and instruct the Bank to hire an appraiser who meets with the approval of the Department. A fair market value appraisal of the leased land should be conducted, and the lease rental recomputed based on the true land

value. This recommendation conforms exactly to Commissioner Harris' promised policy changes and to recommendations of the Attorney General.

2. I am extremely concerned that the Department has no established mechanism by which to solicit representative public input on proposed airport land uses. It is recommended that such a body be constituted with powers and responsibilities specifically delineated.

I am also concerned about the duties and authority of the Master Plan Advisory Committee. I recommend that the role of this Committee be specified, and that its relationship to LARC be defined. The Department insists that this Committee's role is to advise on general policies only, and to have no input on the operational decisions which implement these policies. The Committee members are concerned that their advisory role is futile since their recommendations are rarely solicited and frequently ignored.

We thank the many DOT staff members who cooperated during the course of this investigation. I shall appreciate your written response to these recommendations within thirty days.

Sincerely,

for Frank Flavin
Ombudsman

cc: Don Harris, Commissioner , DOT
Dick Holden, Deputy Commissioner, DOT
Martha Mills, Attorney General's Office, Anchorage

PM:FF/gpw

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF PARKS

Division of Parks
619 Warehouse Dr., Suite 210
Anchorage, Alaska 99501

RECEIVED
SEP 19 1978
ANCHORAGE
OFFICE OF THE OMBUDSMAN

September 18, 1978

Re: Ombudsman Complaint A78-1000

Mr. Frank Flavin
Ombudsman
840 "K" Street, Room 203
Anchorage, Alaska 99501

Dear Mr. Flavin:

Thank you for your letter of August 28, 1978 relative to Denali State Park.

There is one discrepancy which we wish to bring to your attention: control of hunting and fishing rests with the Department of Fish and Game. They continue to designate open areas and control these activities within State Parks. Use of firearms in state park areas is within the jurisdiction of the Division of Parks. Therefore hunting may be allowed in areas closed to firearms (by other methods). Denali is open to bow hunting and has generally been popularly received as such by hunters not wishing to compete with firearm hunters.

We are in the process of revising our Park rules and regulations and will include a specific provision relative to firearms in Denali State Park.

Sincerely,

JCJohannsen for

Terry A. McWilliams
Director

JC:pg

cc: Jeanne Comer, Chief of Maintenance and Operations

Attachment # 3

August 28, 1978

Re: Ombudsman Complaints A78-0947
and A78-1000

Your complaint against Fish and Game for inadequate hunting regulations regarding Denali State Park has been discontinued and a similar complaint opened against Natural Resources, Division of Parks. Fish and Game claims no authority to promulgate hunting regulations in state parks -- Parks does (see AS 41.20.020 (6) enclosed).

I'm also enclosing the entire statute on the Denali State Park. You will note that there is no section "Incompatible uses prohibited" similar to AS 41.20.270 on Kachemak Bay State Park, and like sections in the statutes on other state parks. Neither is there a section on "Discharge of firearms" similar to AS 41.20.280. The sections on firearms in other state park legislation provide that firearms use may be permitted when authorized by regulation. It is the position of the Division of Parks that since they have not allowed use of firearms in Denali State Park by regulation, it is therefore prohibited. Parks cites AS 11.55.050 in the criminal code as authority for prohibiting discharge of firearms in Denali State Park.

I have found your complaint against the Division of Parks, alleging inadequate hunting regulations in Denali State Park, to be partially justified. Although hunting in the Park is prohibited, it is very difficult for a citizen to determine why -- it was very difficult for us to find the information. Parks assures us that a specific provision will be included when their regulations are revised this fall. I, therefore, consider your complaint to have been rectified.

I hope that this information is helpful and thank you for your patience.

Sincerely,

Frank Flavin
Ombudsman

FF/PM:rj
Enclosures

August 28, 1978

Terry McWilliams
Director
Division of Parks
Department of Natural Resources
619 Warehouse Avenue
Anchorage, Alaska 99501

Re: Ombudsman Complaint A78-1000
(Closed)

Dear Ms. McWilliams:

The above-referenced complaint, alleging inadequate regulations on the discharge of firearms in Denali State Park, has been investigated and is found to be partially justified.

Your staff has explained that since discharge of firearms is not specifically allowed by regulation, it is prohibited. AS 11.55.050 was cited as authority. I also understand that the Denali State Park statute does not contain the specific language on discharge of firearms found in other state park statutes.

Although the Division's position may be technically correct, I have found this complaint to be partially justified due to the difficulties encountered by our complainant and ourselves in determining authority for closing the area to hunting. We have suggested, and your staff has agreed, that your revised regulations should contain a specific provision regarding discharge of firearms in Denali State Park. I consider this agreement to have rectified our complaint, and have explained to our complainant your authority for prohibiting hunting.

The cooperation and assistance of your staff in resolving this matter has been very much appreciated.

Sincerely,

Frank Flavin
Ombudsman

FF/PM:rj

STATE OF ALASKA
DEPARTMENT OF FISH AND GAME
Ronald O. Skoog, Commissioner
Division of Commercial Fisheries
Steven Pennoyer, Acting Director

Contact: Michael Nelson
Bristol Bay Area Biologist
Box 199, Dillingham, AK
Phone 842-5227

NEWS RELEASE - FOR IMMEDIATE RELEASE

June 28, 1979

BRISTOL BAY VESSEL LENGTH CLARIFIED

It has come to the attention of the Department of Fish and Game and the Division of Fish and Wildlife Protection, Department of Public Safety, that some fishermen are considering adding temporary bow or stern sections to their fishing boats. The Department's position is that such additions would be in violation of 5 AAC 06.341, the regulation that sets the maximum length of Bristol Bay fishing vessels, if the additions resulted in an overall length greater than 32 feet.

# # # # #

RECEIVED
JUL 20 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

Attachment #4

July 2, 1979 x

Steven Pennoyer
Director
Division of Commercial Fisheries
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints A78-1299
and A79-0647 (Closed)

Dear Mr. Pennoyer:

I don't think there is any question that 5 AAC 06.341 is ambiguous. Prosecution will result in legal certainty but at considerable hardship to the citizen thrust into the "test case" role.

The news release clarification is a good idea. I would like to see a copy of what is released.

I trust this issue will be put to rest in December.

Sincerely,

Frank Flavin
Ombudsman

FF:rj

cc: John Gissberg
Greg Cook
complainants

STATE OF ALASKA

MEMORANDUM

TO: Mike Nelson, Area Biolgist
Commercial Fisheries
Dillingham

DATE: June 25, 1979

FILE NO:

TELEPHONE NO:

FROM: Bob Clasby, Regulations Specialist
Commercial Fisheries
Juneau

SUBJECT: 5 AAC 06.341

Attached is correspondence between the division and the Ombudsman regarding temporary additions to the hulls of Bristol Bay boats and alleged vagueness. As you can see we are still of the opinion the regulation is not vague and that temporary additions to the hull that affect length will be considered in the overall length measurement of the hull proper.

Would you please put out the attached news release (or amend it if you feel it desirable) for the bay area, stating that the regulation does not allow temporary bows, sterns or fish boxes that, when attached to the vessel, would result in an overall length exceeding 32 feet.

We plan to submit a proposal for the December Board meeting that will deal with the subject of the above types of additions.

Please relay this information to and discuss our position with the local Fish & Wildlife Protection staff. Thanks.

cc: w/news release: Parker, Middleton, Frank Sharp

Ed - you can get Lest going in Anchorage

RECEIVED
JUL 20 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

STATE OF ALASKA

JAY S. HAMMOND, Governor

DEPARTMENT OF FISH & GAME
Subport Building, Juneau, Alaska 99801

June 22, 1979

RECEIVED
JUN 25 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

Frank Flavin
Ombudsman
840 K Street, Room 203
Anchorage, Alaska 99501

Re: Ombudsman Complaints A78-1299 and
A79-0647 (Pending)

Dear Mr. Flavin:

We have discussed with the Department of Law the recommendation contained in your letter of June 15, 1979 that an emergency regulation be adopted clarifying 5 AAC 06.341. Mr. John Gissberg's opinion was that at this time we would be unable to make a finding that the current regulation was injurious to the immediate preservation of the public peace, health, safety, or general welfare as required in AS 44.62.250 for the adoption of emergency regulations. We could only speculate as to findings, for we are still of the opinion that the regulation is not unconstitutionally vague. We will be circulating a news release in Bristol Bay explaining our interpretation of "hull proper" as used in 5 AAC 06.341.

Mr. Gissberg's recommendation is to wait until a person is cited for a violation of 5 AAC 06.341 and then if the court decides that the regulation is vague we can make findings that an emergency exists based on the judge's decision. The adoption of an emergency regulation regarding vessel length, no matter how concise, without such legal direction could be struck down because the findings under which it was adopted were speculative as to the existence of an emergency.

We still plan to propose amendments to 5 AAC 06.341 at the December meeting of the Board of Fisheries. This is the best method for amending the regulation as it allows public input as required under the Administrative Procedures Act.

Sincerely,

Steven Pennoyer

Steven Pennoyer, Acting Director
Division of Commercial Fisheries

cc: John Gissberg, Attorney General's Office, Anchorage
Greg Cook, Board of Fisheries and Game, Juneau

11-K8LH

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

June 15, 1979

Steven Pennoyer
Director
Division of Commercial Fisheries
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

Re: Ombudsman Complaints A78-1299 See
and A79-0647 (Pending)

Dear Mr. Pennoyer:

Subsequent to your letter of March 29, 1979, concerning the interpretation of 5 AAC 06.341, I contacted John Gissberg and Greg Cook. (Contrary to your letter, Fish and Wildlife Protection of the Department of Public Safety was contacted by us. Ms. Holden discussed this case with Captain Sharp on October 25, 1978.)

We still feel that the regulation is ambiguous in that "hull proper" is not defined. Your interpretation is that "hull proper" means any section added to the boat whether temporary or cosmetic. In reviewing this section a coast guard documentation officer felt that cosmetic and non-permanent additions would not be included in measuring the "hull proper." Again, the regulations are silent.

Ambiguity exists within the meaning of the principles of statutory construction when a statute (or regulation) is capable of being understood by reasonably well informed persons in two or more different senses. Procedural due process and fairness demand that regulations with a possible criminal sanction be definite.

Clearly the subject regulation is unfair. We recommend that an emergency regulation be adopted defining hull proper.

Thank you for your patience and consideration.

Sincerely,

Frank Flavin
Ombudsman

FF:rj

cc: SE Ombudsman Office
John Gissberg
complainants

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

March 29, 1979

Ombudsman Frank Flavin
Pouch WO
Juneau, Alaska 99811

Dear Mr. Flavin:

Upon reviewing my February 14, 1979 letter to you concerning Ombudsman Complaint A78-1299 and discussion with the Department of Law, I am submitting additional information to you concerning the matter.

A substantial amount of confusion concerning the legality of temporary fixtures being added to vessels employed in the Bristol Bay salmon net fishery would have been eliminated had the Departments of Law and Public Safety been consulted at the beginning of the investigation process. Both Departments have developed policies to handle this matter.

The Coast Guard register length definition does not apply to 5 AAC 06.341, thus Mr. Feero's statement that temporary sections can be added to a vessel without changing its registered length does not apply to the case at hand. The only State law that refers to Coast Guard registers length is AS 16.05.835 regarding the length of salmon seine vessels. The statute limits overall length to 58 feet and Coast Guard register length to 50 feet, thus indicating that the State recognizes a difference between the two types of measurement. While the Coast Guard may allow additions to a hull that affect the vessels overall length without affecting its registered length the State does not.

5 AAC 06.342 sets a limit on the ~~maximum~~ overall length of a vessel and relates that length to the hull proper. Bolt on bows, stern sections or tanks, no matter how temporary, become a part of the hull when attached and will be considered so for overall length measurement under sec. 342.

The Department will submit a proposal at the Board of Fisheries December 1979 meeting that will clarify the intent of the regulation.

Sincerely,

for

Steven Pennoyer, Acting Director
Division of Commercial Fisheries

cc: Col. Fred M. Woldstad, Fish and Game Protection
Dept. of Public Safety, P.O. Box 6188 Annex,
Anchorage, Alaska 99502

Mr. John Gissberg, Asst. Attorney General,
Dept. of Law, 420 L Street, Suite 100,
Anchorage, Alaska 99501

RECEIVED
APR 0 3 1979
JUNEAU
OFFICE OF THE OMBUDSMAN

11-K11LH

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF FISH AND GAME

OFFICE OF THE COMMISSIONER

SUBPORT BUILDING
JUNEAU, ALASKA 99801

February 14, 1979

Ombudsman Frank Flavin
Pouch WO
Juneau, Alaska 99811

Dear Mr. Flavin:

Thank you for your letter of January 9, 1979 updating me on the status of Ombudsman Complaint A78-1299.

Your recommendation for regulatory action would alleviate the confusion associated with the Bristol Bay gill net vessel length limit. However, last fall the Board of Fisheries reviewed a public proposal to eliminate the Bristol Bay vessel length limit altogether. At that time it was the concensus of the Board that additional public input was required before a final decision could be reached. Accordingly, they deferred the matter until the next fall meeting scheduled for December 1979. Considering the status of this regulation, I believe it best to also defer your recommended regulatory changes until the fall meeting. At that time the Board can adopt any housekeeping regulations needed if they decide to retain the vessel length limit.

Sincerely,

Steven Pennoyer

Steven Pennoyer, Acting Director
Division of Commercial Fisheries

RECEIVED
FEB 21 1979
JUNEAU
OFFICE OF THE OMBUDSMAN

-K11LH

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☒ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

January 19, 1979

RECEIVED
FEB 5 1979
JUNEAU
OFFICE OF THE OMBUDSMAN

Mr. Steve Pennoyer
Acting Director
Division of Commercial Fisheries
Department of Fish and Game
Subport Building
Juneau, Alaska 99801

RE: Ombudsman Complaint A78-1299 (Closed)

Dear Mr. Pennoyer:

This is to inform you that the Ombudsman's Office has completed its investigation into the above referenced case and determined it to be justified and rectified.

This matter pertains to an alleged ambiguous regulation, 5 AAC 06.341, "Vessel Specifications and Operation." Prior to contacting this office for assistance, the complainant was unable to obtain a clear explanation or definition of the referenced regulation. Following dialogue with many individuals from various relevant state and federal agencies, it was found that there was no consensus on that regulation's true definition, nor its intent. Based on the results of our inquiries, we agree with the complainant; the regulation is, in fact, ambiguous.

Enclosed is a copy of a letter (written at our request) from Mr. John E. Feero, Supervisory Documentation Officer with the U.S. Coast Guard's Marine Inspection section. He has attached a copy of 46 CFR 69.03-13(c), which defines the specifications used when a vessel is documented, and he explicitly states that a section (a pointed bow piece in this case) may be added to a vessel following documentation, providing it is bolted (or otherwise temporarily affixed) and not made a permanent (welded or fiberglassed) fixture to the hull. We understand that the intent of the Fish and Game regulation is to control the tonnage capacity, or earning capacity, of the fishing vessel. Therefore, if a section is added on, but not affixed in a permanent manner, and does not change the storage capacity of the hull, it is not in violation.

The complainant's problem was rectified through Mr. Feero's letter of explanation dated December 14, 1978. However, in

an effort to prevent a similar incident from occurring, and/or the possibility of an individual being erroneously charged with a regulation violation, we recommend that a clear definition of the term "hull proper" (such definition to include the intent of the regulation) be added to 5 AAC 06.341. In addition, we recommend that the Division of Commercial Fisheries provide a clarification of the information provided in Mr. Feero's letter; that clarification to appear in any manuals, brochures, and forms which supply information on vessel regulations and measurement data for fishermen and boat builders. We have also requested that the Fish and Wildlife Protection Division of the Department of Public Safety, and the U.S. Coast Guard's Marine Inspection Documentation Branch supply similar clarifications in their information documents.

Inasmuch as this is a formal recommendation, please respond as required in 21 AAC 05.070 and 080. The Ombudsman's Office appreciates cooperation and assistance received from the various individuals contacted during this investigation. If you have any questions regarding this investigation, please call me at the Anchorage number listed above, or contact Judith Holden, the Juneau investigator who handled the case, at 465-4970.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

FF/JAH/lm
Enclosure
cc: Col. Fred M. Woldstad, Fish & Game Protection, Dept. of Public Safety, PO Box 6188 Annex, Anchorage 99502
John E. Feero, Marine Inspection, Documentation Branch, U.S. Coast Guard
Rear Admiral Robert A. Duin, PO Box 3-5000, Juneau, 99802
SE Regional Ombudsman Office

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

EPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

323 E. 4TH AVENUE
ANCHORAGE, ALASKA 99501

RECEIVED
JUN 29 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

June 26, 1979

Frank Flavin, Ombudsman
840 K Street, Room 203
Anchorage, Alaska 99501

Re: ADL 200820 - Ombudsman Complaint A 78-1420 (Pending)

Dear Mr. Flavin:

This is in response to your June 1, 1979 letter concerning Ombudsman Complaint A 78-1420 regarding the payment schedule in the land sale contracts from the Wasilla West land sale.

The Department of Natural Resources is not required by statute or regulation to adopt the payment plan which Mr. [redacted] wants. Under the existing statutes and regulations, in effect at the time of the Wasilla West sale, we had discretion to adopt the payment plan which is included in the land sale contracts from the Wasilla West sale. In the Commissioner's May 18, 1979, letter to you as well as the meeting that we had in my office on May 3, we explained our reasons for adopting the payment schedule set forth in the Wasilla West land sale contracts. Without repeating or reiterating everything we have said before, I would like to respond to several specific statements contained in your most recent letter.

The contract presented to Mr. [redacted] provides for a retroactive effective date of August 19, 1978, the date of the auction. This was done for necessary administrative reasons as we have previously explained. Parties to a contract can provide for a retroactive effective date. It is fairly common practice. It is not illegal or even highly unusual as you imply. In fact, your own recommendation in this matter is that we now offer Mr. Breeding a contract with an effective date of November 19, 1978 which is a retroactive effective date.

Attachment #5

RECEIVED
JUN 29 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

You contend that the effective date of land sale contracts for sale by auction should be the date that the contract is signed. What date is that? The purchaser signs the contract on one date and the Commissioner on another date. It is impracticable and would be a great inconvenience to most purchasers to require the purchaser to come into our office in person for a simultaneous signing with the Commissioner. Our practice, based on administrative necessity and convenience to the purchaser, has been to send out the individual contracts by mail for the purchaser's review and signature. After the contract is returned signed by the purchaser, the Commissioner signs for the State. Unlike a real estate transaction in the private sector, there is no single closing date.

Until the land sale contract is executed, we treat the ten per cent deposit paid on the auction date as earnest money. After the contract is signed, we deem the amount paid on the auction date to include the first payment due under the contract in order to relieve the purchaser of having to make another payment so close in time to the ten per cent down payment required on the date of the auction. Our practice does not result in a payment and interest levy before the purchaser has agreed to borrow the money and is bound to the State's terms since the deposit is not treated as part payment until after the contract is signed. Until the contract is signed, the deposit is subject to forfeiture under 11 AAC 54.400 if the purchaser fails to perform as required by the contract.

The payment schedule for the Wasilla West sale, included in the contract presented to Mr. [redacted], does not require interest to be paid in advance, nor have we ever so stated. Under our payment plan, the interest is in arrears but the payment must be made in advance e.g., at the beginning of the applicable quarter. The first payment, which we consider as included in the ten per cent paid on the auction date, does not include interest. The second payment, due on November 19, 1978 at the beginning of the second quarter, includes interest from the date of the auction to the date of payment. You seem to be confused on this despite the fact that we went over our computer calculations in detail with you during our May 3 meeting.

You have recommended that we change our policy prior to the next auction sale. We consider our present policy, which was applied to the Wasilla West sale, to be fair, reasonable and within our discretion under existing law.

RECEIVED
JUN 29 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

As to your specific recommendation regarding Mr. [redacted] contract, the effective date will remain at August 19, 1978 with the first quarterly payment due on November 19, 1978.

Therefore we will require the submittal of the signed contract and payment for all arrearage by June 29, 1979 or Mr. [redacted] will be subject to forfeiture under 11AAC 54.190.

Sincerely,

THEODORE G. SMITH, Director
Division of Forest, Land and Water Management

Ombudsman
Frank Flavin

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

FOR RELEASE June 25, 1979

State land sale contract procedures have been criticized by the Ombudsman in two reports of findings on the same complaint. The allegations investigated resulted from last year's Wasilla West land auction, but also concern subsequent and future disposal programs.

Natural Resources is requiring a payment and interest before the borrower has agreed to borrow money and before the borrower is bound to the state's terms. These procedures result in larger quarterly payments and may result in a higher total purchase price for land.

The Ombudsman found that the Department is improperly: 1.) considering the deposit to be a downpayment, including a first payment; 2.) beginning the ten year payoff period from date of auction rather than from date of contract of sale; and 3.) backdating the contract to date of auction and charging interest from date of auction. State Ombudsman, Frank Flavin said these procedures constitute a "time warp theory of contracting."

MORE

According to the Ombudsman's report, "A 'deposit,' as used in the statute, means earnest money and cannot at the same time be a first payment. The state land auction is not an auction 'without reserve,' and the sale is not consummated until the contract is executed."

Flavin stated that there is no authority for backdating contracts of sale to the date of the land auction. Most of the contracts were not ready for signature until a month after the auction.

In his response to the Ombudsman's findings, Commissioner Robert LeResche argued that a 'date certain' for the sale was required due to other statutory requirements for pre-sale appraisal and public notice, and for determining residency discounts. The Ombudsman's report finds that the "sale" referred to in appraisal and notice sections speaks to the public event (auction), while "sale" for purposes of contracts and payment schedules means the actual transfer of title.

Right of possession does not transfer when the gavel is pounded at a state auction, according to Flavin. State law and regulations provide for an appeal period and Commissioner's review prior to offering a contract of sale to the high bidder for signature.

30 - 30 - 30

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☐ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

June 1, 1979

Robert E. LeResche
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

RE: Ombudsman Complaint A78-1420 (pending)

Dear Commissioner LeResche:

Neither our May 3 meeting with Ted Smith, nor your May 18 letter, has convinced us that your "interpretation of the statute is reasonable, is fair to the purchaser and does not violate any reasonable expectations of a participant in a land sale by public auction."

The Positions

Natural Resources	Ombudsman
8/19/79 Downpayment (including first payment)	Deposit (earnest money)
Contract (backdated)	
10 years starts	
interest starts	
5 day appeal period	5 day appeal period
Commissioner's decision within 45 days	Commissioner's decision within 45 days
Notice period - 30 days	Notice period - 30 days
Contract (real contract date)	Contract (deposit becomes downpayment)
	10 years starts
	interest starts

Natural Resources	Ombudsman
	one quarter from contract: first payment (39 more) interest in arrears (this payment includes interest from contract date to date of payment) $64,046.40 total $1601.16/quarter --------- OR ---------- contract date: first payment (39 more) interest in advance (this payment includes interest from date of contract to second payment) $63,100.00 total $1577.50/quarter
11/19/78: second payment (38 more) interest in arrears (this payment includes interest 8/19 - 11/19) $63,617.58 total $1631.22/quarter	

The Errors of Your Ways:

1. That the deposit is a down payment and a first payment.

"Deposit"* is not defined in AS 38.05.065(a); caselaw and real estate practice establish deposit as "earnest money," "guarantee" or "pledge." As used in AS 38.05.055 and AS 38.05.065(a), the deposit is clearly intended to guarantee the high bidder at the auction will sign the "contract of sale" at a later date. Indeed "deposits" at auctions are generally considered earnest money. (See 7 Am. Jur. 2d,258 Auctions and Auctioneers § 45.)

Treating deposit as first payment as of the date of auction results in a payment and interest levy before the borrower has agreed to borrow the money and is bound to the state's terms. Under the departmental analysis, if a person pays the full purchase price on executing the contract, do you still charge interest from date of auction?

The departmental analysis results in a rather strange down payment of 9.?% which is not provided for in statute or regulation and is, frankly, absurd. The rest of the 10% deposit is, according to your position, the first payment.

AS 38.05.055, the bid deposit receipt, and the contract all refer to a "deposit." Only after there is a contract in 11 AAC 54.300 is there a "down payment."

Never before this complaint was raised did you refer to the deposit as a down payment and first payment.

11 AAC 54.190 provides for possible forfeiture of the deposit only. 11 AAC 54.400 allows forfeiture of payments only after there is a contract. If the deposit is a down payment and first payment, how could it be forfeited under .190?

2. That the 10 years starts from date of auction.

AS 38.05.065 provides that the remainder be paid over 10 years, as does 11 AAC 54.300. The "remainder" is unknown until there is a contract. Were the "remainder" known at the date of auction perhaps the contract could be signed then with a provision for cancellation should the commissioner sustain an appeal or otherwise disapprove the sale.

---

*Deposit: "A 'deposit' is anything given as a pledge or security, as earnest money, or a forfeit, and as used in the clause of a contract for the sale of real estate providing for liquidation of damages in case of default by purchasers included judgement note executed and delivered at time of signing of agreement as well as cash payment." (12 Words and Phrases at p. 247)

A "Deposit" in brokers' parlance means the money paid down to bind the bargain, that is, earnest money. (12 Words and Phrases at p. 225)

3. That the interest runs from date of auction.

11 AAC 54.310 states that interest shall be charged on all contracts of purchase. There is no contract of purchase on the date of the auction.

4. That the contract can be backdated.

There is no authority for the Department to backdate the contract of sale to date of auction. Until contract execution neither party is bound beyond the earnest money or pledge amount. How the borrower is projected through a time warp back to the date of auction to bind him or her at that time defies us.

5. That the date of auction is the date of sale. That date of sale and date of contract of sale are one in the same.

AS 38.05.055 and 38.05.065 are distinguishable from AS 38.05.050, 058, 305, 310 and 345. The latter sections deal with the public event -- auction, lottery, etc., while sections 055 and 065 deal with the actual transfer of title from the state to the individual.

Again, "sale"** is loosely used and undefined by the statute. "Black letter law" dictates that there is no sale until title and possession of the property pass from seller to buyer. In the state disposal, the bid deposit document clearly states that no title passes upon receipt of the deposit at the auction (nor can it until the commissioner reviews, appeal periods run, possible agricultural preferences are asserted, etc.).

**Sale: The general definition of "sale" clearly indicates that title and possession must pass before a sale is consummate (in the case at hand, sale is consummated at time of contract of sale -- not at auction.)

Black defines sale as "a contract between two parties, called respectively the "seller" (or vendor) and the "buyer" (or purchaser) by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. (Black's Law Dictionary, Fourth Edition at page 1503)

Ballentine's defines "sale" as "an actual transfer of title to the land from grantor to grantee by an appropriate instrument of conveyance executed for a consideration in money or equivalent of money." (Ballentine's Law Dictionary, Third Edition at page 1134)

In Noto v. Blasco, 198 So. 429 (La., 1940) the court held that where a purchaser deposited $50 on purchase price of lots, and the vendor and purchaser contemplated completion of the sale in the future by execution of deed transferring ownership, contract was a mere "promise of sale" and was not a completed sale. The court also treated the "deposit as earnest money. The court's rationale was followed in Southern Pacific Transp. Co. v. Port-o-call, Inc. 314 So.2d,758 (La. App, 1975) and is the same situation as the state land sale.

Your citation that the sale is consummated when the auctioneer pounds the gavel is inapplicable here because at a "normal" auction title and right of possession (generally actual possession) transfer when the gavel is pounded. In state auctions no such transfer occurs.

The Department relies strongly on 7 Am. Jur. 2d, 237, 38 Auctions and Auctioneers § 19, which states that the common practice and the general rule of law applicable to sales by auction is that the sale is consummated when the auctioneer accepts a high bid by pounding the gavel. If the entire Am. Jur. section had been analyzed it would have been noted on page 238 that at an auction "where the seller reserves the right to refuse to accept any bid made, a binding sale is not consummated between the seller and bidder until the seller accepts the bid." (The Department cannot accept the bid or consummate the sale until the commissioner's review, appeal periods run, agricultural preferences are asserted, etc.)

In Wilcher v. McGuire 537 S.W.2d 844 (Mo. App. 1976) the court found that an auction sale subject to confirmation by the landowner was not consummated and the landowner could refuse to sell or sell to another. Obviously the sale was not over when the gavel came down. Likewise, at the state land auction the auction is subject to confirmation and the sale is not complete until the contract is executed.

6. That it's not reasonable to assume that there's no "deal" until the contract is signed.

The bid deposit receipt clearly states that no real property interest is being conveyed by execution of the receipt. How could there be a "deal" at the auction if this is the case. What would be the purpose of your regulatory provisions allowing appeal and commissioner disapproval of the transaction if there already was a "deal"?

7. State land sales by public auction are not analogous to the typical private sale of real estate whereby the sale occurs when the contract is signed by all parties on the closing date after escrow."

On the contrary, the transactions are analogous. At the state sale the deposit should bind the buyer while commissioner review, preference rights, appeal rights, discount, etc. (in lieu of title search) are determined. Indeed, financing terms are a primary reason for the escrow period in both situations.

The departmental position dictates a first payment before a financing agreement is reached. By treating the deposit as a first payment, instead of earnest money, the Department has accepted part performance by the buyer and created an equitable interest. Further, the Department, under its theory, has no right to compel forfeit of the deposit as it is not treated as earnest money, but part payment. The backdating amounts to a "Nunc Pro Tunc" entry which is only allowed to supply omission in record of action really had but omitted through inadvertence or mistake. (See Black's Law Dictionary, Fourth Edition at page 1218 and 28A, Words and Phrases at page 110, emphasis added.) There is no mistake or inadvertence to justify backdating the contract of sale to the auction date, nor was a sale really had on the auction date due to appeal periods, commissioner's approval, etc.

8. That you're charging, per [redacted]'s contract as written, interest in advance.

Your second payment, due in November, includes interest from date of auction to date of payment. You have calculated that Mr. [redacted] owes $1631.22 per quarter for 39 quarters. This is interest in arrears for a total purchase price, after down payment and deduction of discount, of $63,617.58. Are you now saying that the deposit is down payment and first payment plus interest?

Were [redacted] to make 40 quarterly payments with interest in advance (first payment when contract is signed) he would pay $1577.50 per quarter for a total of $63,100.00

Forty payments with interest in arrears (first payment one quarter from date of contract) would be $1601.16 per quarter with a total of $64,046.40. You are correct that the last payment in this instance would have to be timely to meet the ten year statutory requirement.

Conclusion

A "deposit," as used in the statute, means earnest money and cannot at the same time be a first payment. The state land auction is not an auction "without reserve," and the sale is not consummated until the contract is executed. There is no authority for backdating the contract of sale to the date of auction.

Further, the remainder due is to be paid off in equal payments over a ten year period. There is no remainder until the contract is executed. If you wish to charge interest in advance, the first payment is due upon signing of the contract and there are 39 more quarterly installments. If you wish to charge interest in arrears, the first payment is due one quarter

from signing of the contract and there are 39 more. The last of these quarterly installments must be timely to satisfy the ten year payoff.

Last summer, when we investigated the Wasilla West complaints, we thought that time and place had passed. Now, through the Department's time warp theory of contracting, we're all projected back to those thrilling days of yesteryear to relive yet another misadventure in the twilight zone of State land policy.

Our original recommendation stands. We would appreciate your response by June 15.

Sincerely,

Frank Flavin
Ombudsman

FF:rj

cc: Ted Smith
Shelly Higgins

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

OFFICE OF THE COMMISSIONER / POUCH M – JUNEAU 99811

RECEIVED
MAY 23 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

May 18, 1979

Frank Flavin,
Ombudsman
840 K Street,
Room 203
Anchorage, Alaska 99501

Dear Mr. Flavin:

This is in response to your March 23, 1979, letter concerning Ombudsman Complaint A 78-1420 (Pending) dealing with the payment schedule under ADL 200820 for payments due the State for land purchased by [redacted] on August 19, 1978, at the Wasilla West Land Sale.

Your letter mentions several reasons in support of your recommendation that the Commissioner change the contract provision for payments in accordance with Mr. [redacted] objections. I would like to respond to each of the reasons that you have cited and to attempt to explain clearly why we adopted the payment schedule as provided in the land sale contracts from the Wasilla West sale.

First, your recommendation is based on the incorrect premise that the payment schedule set forth in the sale contract causes Mr. [redacted] unfair expense over the 10-year repayment period. In fact, when the payments which would be due under a 40-installment schedule are properly calculated, based on a balance of $47,900 with interest beginning on the date of sale, Mr. [redacted] would pay $407.00 more in interest over the 10-year repayment period than he is required to pay under the 39-installment schedule provided in the contract.

10-J9LH

Mr. [redacted] calculations which result in 40 payments of $1,577.50 are erroneous. His calculations are apparently based on interest beginning November 19, 1978, which is the date that the first installment is due, instead of August 19, 1978, which is the date of sale and the contract date. The correct figure for 40 equal installments would be $1,601.16 as compared to 39 payments of $1,631.76 as required by the contract.

Your letter fails to address the critical issue and point of difference between the State and Mr. [redacted] The question is whether the date of the sale by auction, August 19, 1978, should be used for the purpose of calculating the interest due on the remainder of the purchase price after the bid deposit or down payment is subtracted, and for the beginning of the 10-year period for the payment of the balance due plus interest. Mr. [redacted] contends that November 19, 1978, or the date on which he finally gets around to signing the contract should be used for calculating the interest and the 10-year repayment period.

> AS 38.05.065 provides in pertinent part:
>
> Terms of Contract of Sale. (a) The contract of sale for land sold at public auction shall require the remainder of the purchase price to be paid in monthly, quarterly, or annual installments over a period of 10 years, with interest at the rate of not less than five per cent a year. Installment payments plus interest shall be set on the level-payment basis.

We believe that we have reasonably construed this statute to require payment of the full contract price plus interest within 10 years of the date of sale by auction, not the date on which the formal land sale contract is executed.

This statute is somewhat ambiguous, and, read alone, can arguably be interpreted to provide that the full purchase price plus interest must be paid in installments within a 10-year period from the date that the formal land sale contract is signed by all parties. However, when read in conjunction with the other statutes applicable to land sales by public auction, the only reasonable interpretation of AS 38.05.065 is that the land sale contract must provide for payment in full plus interest within 10 years from the date of sale.

In order to meet all the statutory requirements applicable to sale by public auction, including pre-sale appraisal and public notice, and to apply the land discount program, we

must have a date certain for the sale. (See, AS 38.05.050; AS 38.05.058; AS 38.05.305; AS 38.05.310; AS 38.05.345). Of necessity, we use the date of auction as the date of sale for the purpose of appraisal, notice, and determining eligibility for land discounts when the sale is by public auction.

It would be illogical to use a different date as the effective date of the contract for the purpose of computing interest and determining a schedule for paying the remainder of the purchase price. Accordingly, all of the sale contracts relating to the Wasilla West Land Sale, including the one offered to Mr. [redacted], provide for an effective date of August 19, 1978, which is the date of the auction, although most of the contracts were not actually ready for signature until approximately a month after the auction because it takes that long to determine eligibility for land discounts. This is a reasonable way, and apparently the only way, to conduct a sale by auction in order to meet all of the applicable statutory requirements and to administer the land sale contracts in a consistent manner. Moreover, given the fact that a purchaser at public auction may delay signing the contract for various reasons, as Mr. [redacted] has in fact done in this instance, it would not make good sense or good policy to do what Mr. [redacted] suggests, which is to calculate interest charges and the 10-year repayment period from the date that the contract is signed.

It has been the long-standing policy of the State, as well as standard commercial practice, to require payment in advance i.e. payment at the beginning of a payment period. We could set up a payment schedule whereby the remainder due plus interest is paid in advance in 40 equal installments within 10 years of the date of sale (as required by AS 38.05.065) however, such a system would require the purchaser to make his first quarterly payment at the same time as the initial deposit of 10% of the purchase price. We decided to construe the down payment as including the first payment in order to avoid requiring the purchaser to pay additional up-front money. The only alternative, in order to allow the purchaser to pay in 40 installments while keeping the total length of the payment within the 10 years required by statute, is to allow payments in arrears i.e. payments due at the end of the determined payment period. This would deviate from long-standing practice as well as standard commercial practice. Moreover, if the purchaser were late in making his last payment, he would violate the statutory requirement that the total purchase price plus interest be paid within 10 years. Based on the foregoing, we think it is more equitable to treat the bid deposit, or down payment, whichever you want to call it, as including the first payment. It needs to be emphasized that under this payment schedule, the purchaser has slightly higher installment payments but the purchaser also saves interest and therefore pays less over the 10-year period.

In support of your recommendation you state that commercial practice would treat the bid deposit as a down payment, not a first payment. Of course the State is not obligated to follow commercial practice. State law obviously imposes some requirements that differ from commercial practice. Furthermore, no purchaser can reasonably expect that the State will follow commercial practice in all respects. In fact, the credit terms extended by the State on sales by public auction are considerably more favorable to the purchaser than the terms available from commercial lending institutions. For example, the interest figure of 6 percent applicable to the Wasilla West Sale is considerably lower than prevailing commercial rates.

Moreover, I believe that any individual familiar with sales by auction in the private sector would assume that the sale occurs on the day of auction and that the interest and payments would be computed from that date. Common practice and the general rule of law applicable to sales by auction is that the sale is consummated when the auctioneer accepts a high bid by pounding the gavel. 7 Am. Jur. 2d, 23738, Auctions and Auctioneers ¢ 19. State land sales by public auction are not analogous to the typical private sale of real estate whereby the sale occurs when the contract is signed by all parties on the closing date after an escrow period during which title is searched and financing arranged. For this reason, it does not seem reasonable for the successful bidder at public auction to assume that there is no deal until the formal conveyance document is executed.

As an additional reason for your recommendation, you state that nowhere in the statutes, regulations, bid deposit receipt, or contract of sale is it clearly stated that the deposit shall be considered a first payment. This is true. The regulations in effect at the time of the Wasilla West Sale and the sale documents could have more clearly spelled out the fact that the 10year payment schedule and interest would run from the date of sale. However, there was no statement which would mislead a potential purchaser into thinking that he would have 40 installments over ten years from the date the formal contract is executed in which to make full payment. Moreover, our new regulations do specify that interest is to be computed from the auction date. (11 AAC 67.877(b).)

Finally, you contend that treating the bid deposit as including the first payment is inconsistent with 11 AAC 54.300 and with the language in the bid deposit receipt and contract of sale. There is no clear inconsistency. You cite language to the effect that the remainder of the purchase price is to

be paid in installments. The payment plan which we have adopted requires payments of the remainder of the purchase price, after the down payment is deducted, in quarterly installments. This conforms with the express language you have cited. There is no provision in the rules, the bid deposit receipt or the contract of sale which would prohibit construing the down payment as including the first payment or which would require that the purchaser have 40 installments and ten years from the date the formal contract is signed in which to pay the remainder of the purchase price plus interest.

Hopefully, the foregoing explanation of why we adopted the payment schedule provided in the sale contract presented to Mr. [redacted] is clear and will serve to persuade you that our interpretation of the statute is reasonable, is fair to the purchaser and does not violate any reasonable expectations of a participant in a land sale by public auction. As I stated in a previous letter to Mr. [redacted] regarding his complaint, his interpretation of AS 38.05.065 may arguably be reasonable but we cannot administer land sales according to each individual's interpretation of an ambiguous statute since to do so would greatly complicate administration. I reaffirm my earlier decision in this matter.

Sincerely,

Robert E. LeResche
Commissioner

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WD
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

March 23, 1979

Commissioner Robert E. LeResche
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Re: Ombudsman Complaint A78-1420 (Pending)

Dear Commissioner LeResche:

After much consideration and calculation, the above-captioned complaint has been thoroughly reviewed by this office and we are requesting reconsideration of opinions voiced by you in a letter to [redacted] dated November 29, 1978. This complair.. concerns some of the same points presented to you at that time by our complainant, [redacted]

[redacted] complained that the figures determined by the Divison of Forests, Lands and Water Management were improperly calculated, causing him unfair expense during the ten year repayment schedule for ADL 200820. Mr. [redacted] bid for the proposed property at the Wasilla West land auction on August 19, 1978 and was the apparent high bidder with the total bid of $81,000 for which he paid a $8,100 deposit. Upon determination that [redacted] was eligible for a $25,000 discount on the land through the newly-enacted residency discount program, his purchase price was then $56,000.

In reviewing similar sales in the private sector, we can understand why Mr. [redacted] believed the remainder of purchase price that he owed the State for the land was $56,000 minus the deposit paid for the land at the time of the auction ($8,100) or $47,900.

In your letter to Mr. [redacted] dated November 29, 1978, you stated:

"I note your interpretation of the payments would result in a down payment, plus 40 equal quarterly payments thereafter, but no statute requires this. Our practice has been to count the down payment as the first payment and require 39 equal payments thereafter. I think this is not an unreasonable interpretation of our obligation

under the statute, and therefore see no reason to change department policy even though there is no reason to quarrel that your interpretation is also a correct interpretation of the statute. We cannot of course administer contracts according to each individual's reasonable interpretation of the statute, where more than one reasonable interpretation is conceivable, since to do so would result in greatly complicating the administrator's burden. For that reason I affirm Director Smith's contract to you, with the exception noted above."

We believe you should reverse your position for the following reasons:

1) Commercial practice would treat the deposit as a downpayment. Even if the deposit is considered earnest money, commercial practice is to treat it as a downpayment and not a first payment.

2) Nowhere in the statutes, regulations, bid deposit, bid deposit receipt, or contract of sale is it clearly stated that the deposit shall be considered a first payment.

3) The statute AS 38.05.055 is ambiguous as to the treatment of the deposit. However, Departmental regulations clearly treat the ten percent deposit as a downpayment. 11 AAC 54.300 states:

"Persons purchasing state land under contract of sale shall be required to pay the principal sum remaining after the 10 percent downpayment in annual installments . . ." (emphasis added)

We seriously question an administrative practice (treating the ten percent as a first payment) that is clearly inconsistent with an APA adopted regulation.

4) Treating the deposit as a first payment rather than a downpayment is inconsistent with the language in the bid deposit receipt and contract of sale.

The bid deposit receipt correction states:
"The contract of sale for land sold at public auction requires the remainder of the purchase price to be paid in quarterly installments on the dates specified in the contract over a period of ten years, with interest at the rate of six percent per year. Installment payments, including interest, are set on the level-payment basis." (emphasis added)

If the ten percent deposit is not to be treated as a downpayment, the word "remainder" is meaningless and should not be included. You only have a remainder if you subtract the downpayment and it is the remainder which is to be paid in quarterly installments.

The contract of sale states:
"the amount of $8,100.00 which is ten percent (10%) of the total price, has been paid by the Purchaser of the unexecuted contract. The balance of said total price shall be paid in equal quarterly installments . . ." (emphasis added)

Again, you only have a balance if you treat the deposit as a downpayment and it is the balance that is paid in equal quarterly installments.

To explain, the 39 payment plan devised by the Department rounds out to quarterly payments of $1,631.22, as payments "in arrears" (payments due at the end of the determined payment period). In considering that the payment plan the State devised more closely resembles the traditional "payment in advance" (payment at the beginning of a payment period), Mr. [redacted] was correct in determining that his payments, when figured over 40 equal payments, come out to $1,577.50. The difference (predominately in the interest accruing over the span of the contract life) figures out to $517.58 over the next ten years. This $53.72 per quarter is money the complainant alleges he will not be able to use--and it is money he thinks he should not have to pay. We agree. We do not feel the State should adopt harsher terms than banks.

RECOMMENDATIONS:

We recommend the Department treat the ten percent deposit as a downpayment and recompute Mr. [redacted] quarterly payments to 40 equal payments beginning with the November payment due last fall. We also recommend that this policy change be accomplished prior to the next land sale.

Thank you for your time and consideration in this matter. Your expedient consideration would be appreciated in light of the fact that Mr. [redacted] has been issued an ultimatum to pay the two back quarterly payments due at this time. He is willing to do so as soon as the amount to be paid is resolved.

Sincerely,

/S/

Frank Flavin
Ombudsman

CA/FF:gpw

Ombudsman

Frank Flavin

State of Alaska

Reply to:

☒ 840 K Street, Room 203
Anchorage, Alaska 99501
(907) 276-4011

☐ Pouch WO
Juneau, Alaska 99811
(907) 465-4970

☐ P.O. Box 74358
Fairbanks, Alaska 99707
(907) 452-4001

August 14, 1979

Robert LeResche, Commissioner
Department of Natural Resources

Tom Cook, Director
Division of Minerals and Energy Management

Re: Ombudsman Complaint A78-0899
(Pending)

Dear Mr. LeResche and Mr. Cook:

Copies of our April 16, 1979 letter to Ethel H. Nelson, Leasing Manager, were sent to each of you. The information we presently possess indicates that the Division of Minerals and Energy Management will continue to require recorded copies of documents under penalty of loss of lease. This continues despite our recommendation and despite the lack of a new regulation authorizing the practice.

As stated in our letter of April 16, and in previous correspondence in this case and in case A79-0202, 11 AAC 86.130 does not explicitly require copies of recorded documents, but only copies of the documents which were recorded. Given the potential loss of a mining claim for failure to provide recorded copies, notice of such potential penalty should be provided in the appropriate manner to the affected population.

The sole appropriate method would be the promulgation or amendment of a regulation stating that the documents to be provided under 11 AAC 86.130 must be copies of the documents filed with the recorder's office and stamped received with date and time by that office. Neither an internal policy nor an item in an informational brochure can satisfy the due process requirements that underlie promulgation of regulations in the Alaska Administrative Code.

We ask for your response to our recommendations of

1) Cessation of penalties for non-recorded copies and
2) Promulgation of new regulations requiring recorded copies.

Your responses would be appreciated within 30 days of receipt of this letter.

Sincerely,

Frank Flavin
Ombudsman

FF/NSB/jm

SEE ATTACHMENT #6

STATE OF ALASKA

JAY S HAMMOND, GOVERNOR

DEPARTMENT OF LABOR

DIVISION OF EMPLOYMENT SECURITY
Affiliated with U S Employment Service

P. O. BOX 3-7000
JUNEAU, ALASKA 99811

RECEIVED
MAY 11 1979
ANCHORAGE
OFFICE OF THE OMBUDSMAN

May 8, 1979

Re: AK (PRI 10-3 A)

Ms. Paddy Moriarty
Deputy Ombudsman
840 K Street, Room 204
Anchorage, AK 99501

Dear Ms. Moriarty:

Subject: Receipt of UI Benefits While In CETA Training (Ombudsman Complaint A79-0113)

Our regulations regarding the payment of unemployment insurance benefits to claimants attending vocational training have been in effect for many years. These regulations, however, have been interpreted and re-interpreted several times over the past couple of years. Mr. B. W. Finley's memo, to which you refer, dated June 20, 1978, states the intent of then newly received CETA regulations. Our policy pertaining to this subject was clarified in UICL 7-92 dated July 19, 1978, stating, basically, that CETA claimants would be treated no differently than other UI claimants receiving vocational training.

This policy was restated in a rewrite of UICL 7-92 on August 24, 1978, denying benefits to any UI claimant receiving a training allowance. On September 15, 1978, an amendment to UICL 7-92 was issued clarifying that only the waiver of availability provided in 8 AAC 85.200(b)(4) would not be granted. On April 25, 1979, a restatement of the above policy was made. Basically, according to our regulations, CETA classroom trainees receiving a training allowance cannot be granted a waiver of availability and suitable work refusal. They must, therefore, meet the same conditions of availability as any other claimant.

For your information I have attached copies of all of the above referenced UICL's as well as a copy of 8 AAC 85.200 of our regulations.

If we can be of any further assistance in this matter, please feel free to contact us.

Sincerely,

A. G. Zillig

A. G. Zillig
Director, ESD

7-G7LH

ATTACHMENT #7

(E) a doctor's certificate may be required periodically by the director or his representative for extended illness or disability.

(d) Pregnancy is not an "illness or disability" as referred to in AS 23.20.380(1) and treated above. (Eff. 10/25/68, Reg. 27; am 8/20/70, Reg. 35; am 8/1/74, Reg. 51)

Authority: AS 23.20.045
AS 23.20.380

8 AAC 85.200. PAYMENT OF UNEMPLOYMENT INSURANCE BENEFITS WHILE ATTENDING A VOCATIONAL TRAINING OR RETRAINING COURSE. (a) An unemployed individual who has filed a claim for benefits may make written application to the director for approval of payment of unemployment insurance benefits during attendance at a vocational training or retraining course. The applicant shall provide the following information:

(1) his most recent employer, his occupation with his employer, and the reason he is no longer working for him;

(2) the nature of the training or retraining course he is attending or plans to attend;

(3) the reason or need for taking this training;

(4) the name and address of the training facility providing the training or retraining; and

(5) the beginning date of the training or retraining course, its duration and the number of hours per day and week the course is conducted.

(b) Approval of payment of benefits to a claimant attending a vocational training or retraining course of less than six months' duration may be granted by the director or the assistant director of unemployment insurance or his authorized representative if the director, the assistant director or his representative finds that

(1) reasonable employment opportunities for which the claimant is already fitted by training and experience are minimal and are not likely to improve in the foreseeable future, or that the claimant is not using his full skill potential and the training or retraining relates to an occupation which would more fully use his potential capabilities; and

(2) the training or retraining course relates to an occupation for which there are, or are expected to be, reasonable work opportunities; and

(3) the training or retraining course is offered by a reliable vocational school or educational institution; and

(4) the claimant is not receiving a training or retraining allowance under any public or private training or retraining program; for the purpose of this paragraph, "training allowance" does not include subsistence and transportation allowances or veterans' education allowances.

(c) Approval of payments to a claimant attending a vocational training or retraining course of six or more months' duration may be granted by the director when, in addition to the requirements of (b) of this section

(1) the claimant is disabled to a point at which he can no longer pursue his usual occupation; or

(2) certification for entry into the occupation for which the training or retraining is being taken is contingent upon completion of a specific number of hours or months; or

ALASKA DEPARTMENT OF LABOR
Employment Security Division
P.O.Box 3-9000 Juneau, Alaska 99811

UICL: 7-92

July 19, 1978

SUBJECT: Receipt of UI Benefits While in CETA Training

PURPOSE: To give guidelines in processing UI claims for claimants who are in CETA training.

The department issued a memo on June 20, 1978, outlining it's policy regarding UI benefits while in CETA training.

To further clarify our position on this matter, UI claimants attending CETA training must meet the same criteria as other UI claimants attending regular training. Each case must be determined on it's own merits.

Local offices will send these claims to the Central Office for adjudication in the normal manner.

If you have any questions regarding this UICL, please contact the Supervisor of Technical Support.

David Gale

David L. Gale
Director

ATTACHMENTS: Memo dated June 20, 1978

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: None

Rescinded

ATE
ALASKA

MEMORANDUM

DEPARTMENT OF LABOR
Employment Security Division

TO: All Employment Centers &
Pertinent Benefit Sections

DATE: June 20, 1978

FILE NO: AKE (EMS 12-26)

TELEPHONE NO:

FROM: B. W. Finley
Acting Deputy Director

SUBJECT: Receipt of UI Benefits While In CETA Training.

This memo will replace the Director's memo of February 25, 1975, on the above subject. The CETA regulations, Title I Section 95.34 (d), and Title III Section 97.134 (c), both dealing with training allowances, state that CETA participants should be encouraged to apply for and claim unemployment insurance benefits if they are not already receiving such benefits.

It is clearly the intent of the regulations that CETA participants in training programs be encouraged to apply for unemployment benefits. CETA trainees will be allowed to receive benefits which will be augmented by CETA training allowances to bring the total amount received up to the maximum CETA training allowance amount. However, if a CETA trainee applies for unemployment insurance after training has already been started, no UI will be payable for back weeks. The new claim date will remain the date the trainee first contacts our office. Having already started training will not be a reason for backdating a claim.

For administrative purposes, this policy will be effective July 3, 1978.

ALASKA DEPARTMENT OF LABOR
Employment Security Division
P.O. Box 3-9000 Juneau, Alaska

UICL 7-92 August 24, 1978

SUBJECT: Receipt of UI Benefits While in CETA Training

PURPOSE: To rescind the agency policy for the payment of UI Benefits to CETA trainees as outlined in UICL 7-92, July 19, 1978.

After researching the payment of UI benefits to trainees receiving training allowance it has been determined that the agency cannot pay benefits to anyone receiving a training allowance.

The Alaska Administrative Code 8AAC 85.200(7) states, "the claimant is not receiving a training or retaining allowance under any public or private training or retraining program, except that for the purposes of this section, training allowances shall not include subsistence and transportation allowances, nor veterans educational allowances."

In a meeting with Community and Regional Affairs, it was determined that CETA allowances are training allowances and therefore no UI benefits can be paid.

If you have any questions regarding this UICL please contact the Supervisor of the Technical Support Unit.

David Gale

David L. Gale
Director

ATTACHMENTS: None

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: UICL 7-92, dated July 19, 1978

ALASKA DEPARTMENT OF LABOR
Employment Security Division
Box 3-9000 Juneau, Alaska 99811

UICL 7-92 (Amendment 1) September 15, 1978

SUBJECT: Receipt of UI Benefits While in CETA Training

PURPOSE: To clarify the lication of the Law and Statutes as they pertain to the receipt of training allowances and how the UI benefits are affected.

UICL 7-92 outlines the agency's policy regarding the receipt of UI benefits to claimants who are receiving CETA training allowances. This policy also pertains to all training allowances. Under Section 23.30.382 and 8AAC 85.200, the receipt of training allowances only affects the granting of the waiver of availability while attending a training or retraining course. If a claimant is attending a training or retraining course and is determined to be available under Section 23.20.380(1), the receipt of training allowances does not apply and benefits will be allowed.

Under the present circumstances, 8AAC 85.200(b)(4) only applies to the waiver of availability while attending school. There is nothing in any other section of the Law or the Statutes which allows us to disqualify a claimant from receiving benefits if a training allowance is being received. The example under A&A 40 of the Precedent Manual dealing with training allowances specifically states that the claimant was unavailable and therefore does not apply in this instance.

We realize that this does not reflect the intent of the agency, however, until such time as the Law and/or the Statutes are amended we will abide by the above procedures.

If you have any questions regarding this UICL, please contact the Supervisor of Technical Support.

David L. Gale
Director, ESD

ATTACHMENTS: None

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: None

ALASKA DEPARTMENT OF LABOR
Employment Security Division
P.O. Box 3-7000 Juneau, Alaska 99811

UICL 7-92 April 25, 1979

SUBJECT: Receipt of UI Benefits While Receiving a Training Allowance

UI claimants who are receiving a training allowance are not automatically denied benefits under 8 AAC 85.200(b)4 but, simply, cannot be granted a waiver of availability and suitable work refusal. This means that, since the waiver does not apply, they must meet the same conditions of availability as other claimants.

Attendance at a training course during the hours normally worked in a claimants occupation raises a serious question as to his availability for work and such cases are adjudicated on that basis.

In some cases, CETA classroom trainees may apply for UI benefits. Since the waiver cannot be granted, the question of availability must be pursued. CETA participants, in committing to an employability plan, virtually remove themselves from the labor market during their training and must be adjudicated with this in mind.

If you have any questions regarding this UICL, please contact the UI Technical Support Unit.

A. G. Zillig
Director, ESD

ATTACHMENTS: None

DISTRIBUTION: Per UICL Distribution List

RESCISSIONS: UICL 7-92 dated 8/24/78; UICL 7-92 (Amendment 1) dated 9/15/78

June 27, 1979

Don Hostack, Director
Division of Occupational Licensing
Department of Commerce
Pouch D
Juneau, Alaska 99811

Re: Ombudsman Complaints A79-0181,
A79-0165 and A79-0688 (Pending)

Dear Mr. Hostack:

The first complaint referenced above was filed in February by [redacted], who alleged that Occupational Licensing was unfairly withholding refund of his contractor bond desp[redacted]he fact that he had not activated his registration. Mr. [redacted] had submitted a request for refund with an affidavit that he had never done business as a contractor. Despite earlier intentions, he had never obtained a business license.

The second complaint was filed by [redacted], alleging that Wage and Hour had delayed unduly long in satisfying her wage claim. A79-0688 is a complaint we have opened against Occupational Licensing on the same subject.

I know that you are familiar with both cases. Our complainants have now been paid. Each time the Attorney General's office was called in to issue an opinion as to the propriety of refund or release of bond under your statute. Each complainant experienced a prolonged delay while a legal interpretation or resolution was obtained. We feel that both complaints are at least partially justified despite statutory ambiguity. Although they have now been rectified, the ambiguity remains.

It is our understanding that regulations are being proposed to clarify these issues. We would appreciate a copy of these drafts, as well as notices for public comment so that we may advise our complainants.

While it is hoped that AG opinions formalized into regulations will provide an interim solution for these problems, we are still concerned with the whole question of the adequacy of contractor bonds, and the inequity of protection afforded by cash or TCD in lieu of bond. We hope that the Division

ATTACHMENT #8

will have clarifying legislation introduced and advocate for its passage. We understand that Wage and Hour is at least conceptually behind amendments to AS 8.18.071 as it relates to their ability to satisfy wage claims.

This office would prefer, however, that legislation introduced at the request of Occupational Licensing propose a method for payment of claims against contractors which offers an alternative to the bond or cash in lieu thereof. It's our feeling that current law is perhaps ambiguous, but certainly inadequate and unequal in degree of protection. We realize that there must be a balance between the contractor's ability to obtain a bond and the degree of public protection afforded. It would seem that this question could be bypassed through creation of a new method of payment. We believe that the Legislature ought to face this question square on rather than attempt to patch a policy of questionable benefit to anyone.

We would appreciate being kept informed of discussions leading to proposed statutory changes, and will hold these complaint files open pending resolution of the problems they raised.

If we can be of assistance, please ask. Although I don't recall past complaints on point, we have received numerous bond complaints which could add to justification for a statutory revision. Thank you for continued cooperation. Let us know when you go back to wearing one hat.

Sincerely,

Frank Flavin
Ombudsman

FF/PM:rj

cc: Dale Cheek

DEPARTMENT OF COMMERCE AND ECONOMIC DEVELOPMENT
Division of Occupational Licensing
Pouch D, Juneau, AK 99811

BRUCE BOTELHO
AAG

2/16/79

465-2536

Richard H. Long
Chief Investigator

Custom Carpentry
[redacted]
Specialty Contractor Nbr 6214

Attached is a copy of the contractor's registration file for the above subject. The applicant, Mr [redacted], has and continues to press for release of his cash deposit which he submitted in lieu of a bond.

If this gentlemen has not in fact activated the use of his registration then it is doubtful that the chance of suit against his deposit could arise. Even so, we are bound to follow the rules, which in this case appear not clear.

Please review and advise whether not the deposit may be released based on current documentation. If not, what do you advise?

Possibly one additional piece of documentation would suffice. That is, Mr [redacted] submit a sworn affidavit that he has not activated his registration and cannot have any possible suits pending against him which would apply against his deposit. This could be done before my staff in Anchorage.

Lacking clarity under AS 08.18.115 regarding such instances as this, I feel I need your input before I can make a recommendation to the director.

Your assistance is appreciated.

Attachment

RHL

cc. Jane English.

RECEIVED
FEB 21 1979
JUNEAU
OFFICE OF THE OMBUDSMAN

STATE OF ALASKA

MEMORANDUM

TO: Richard H. Long RHL.
Chief Investigator
Division of Occupational Licensing
Department of Commerce and Economic Development

DATE: February 26, 1979

FILE NO:

TELEPHONE NO:

MAR 2 1 05 PM '79
OCCUPATIONAL LICENSING

FROM: AVRUM M. GROSS
ATTORNEY GENERAL

SUBJECT: Custom Carpentry [redacted]

By: BMB
Bruce M. Botelho
Assistant Attorney General

This memo is in response to your communication of February 16, 1979 regarding the above specialty contractor.

Please be advised that in my opinion an affidavit submitted by Mr. [redacted] indicating that he has not activated his registration would suffice as justification to release his cash deposit submitted in lieu of a bond.

Should you have any further questions, please do not hesitate to contact me.

BMB:vr

to: Jane English
Contractor Desk

3/2/79

FM: Richard H. Long
Chief Investigator

subj: As above

Proceed as noted in BB memo above. This should be retained in the permanent file as back-up for the release, file subject as above.
This should close this matter and enable you to release the C.D.
BHL.

March 5, 1979

Eric Olson
Assistant Attorney General
Attorney General's Office
Anchorage

Don Hostak, Director
Division of Occupational Licensing
Department of Commerce and
Economic Development

State of Alaska v. Paramount
Paint and Decorators, Inc.

Upon recommendation of our attorney, the division is prepared to pay the amount of the judgment in the above captioned subject matter from the proceeds of the cash deposit, provided that an affidavit is submitted to this division by Harold Mosher, President of Paramount Paint and Decorators, Inc., indicating that the company is no longer engaged in business of any sort and that the company has not been so engaged since prior to the time Mr. Mosher signed a confession of judgment on behalf of the corporation.

As a second condition precedent to paying from the cash on deposit, I would request that you submit an affidavit of publication that makes clear the intent of the State to pay from the proceeds of the deposit unless any person having a claim to that deposit files a lawsuit prior to the specified date of the payment which should be fixed at a time at least two weeks subsequent to the publishing date of the notice.

Should you have any further questions, please do not hesitate to contact me.

DH/kkkl/3

Sec. 08.18.031. Certificate of registration — issuance, duration, renewal. A certificate of registration expires on June 30 of each year following the date of issuance or renewal and shall be renewed under the same requirements as for an original registration. The commissioner shall issue to the applicant a certificate of registration upon compliance with the registration requirements of this chapter. (§ 2 ch 100 SLA 1968; am § 1 ch 49 SLA 1972)

Sec. 08.18.041. Registration and renewal fees. The applicant shall pay to the commissioner a registration or renewal fee as follows:

(1) general contractor $100
(2) specialty contractor 50

(§ 2 ch 100 SLA 1968)

Sec. 08.18.051. Registered name. Except as provided otherwise by state law, no person who has registered under one name as required by this chapter may act in the capacity of a contractor under any other name unless that name also is registered. All advertising, contracts, correspondence, cards, signs, posters, papers and documents prepared by a contractor which show his name and address shall show his name and address as registered under this chapter. Individual contractors and partners, associates, agents, salesmen, solicitors, officers and employees of contractors shall use their true names and addresses at all times while acting in the capacity of a contractor or performing related activities. (§ 2 ch 100 SLA 1968)

Sec. 08.18.061. Requirements of political subdivision. A contractor who is licensed by the state under this chapter may not be required to give bond in applying for or holding a license issued by a political subdivision. (§ 2 ch 100 SLA 1968).

Article 2. Bond and Insurance.

Section		Section	
71.	Bond required	101.	Insurance required
81.	Claims against contractor	111.	Advertising bond and insurance
91.	Cancellation of bond	115.	Return of cash deposit

Sec. 08.18.071. Bond required. (a) Each applicant shall, at the time of applying for a certificate of registration, file with the commissioner a surety bond running to the State of Alaska conditioned upon the applicant's promise to pay

(1) all taxes and contributions due the state and political subdivisions,

(2) all persons furnishing labor or material or renting or supplying equipment to the applicant, and

(3) all amounts that may be adjudged against him by reason of negligent or improper work or breach of contract in the conduct of the contracting business or by reason of damage to public facilities occurring in the course of a construction project.

(b) If the applicant is a general contractor the amount of the bond shall be $5,000; if he is a specialty contractor the amount of the bond shall be $2,000. In lieu of the surety bond the applicant may file with the commissioner a cash deposit or other negotiable security acceptable to the commissioner of commerce, in the amount specified for bonds.

(c) The bond required by this section remains in effect until cancelled by action of the surety, the principal, or the commissioner. No action may be commenced upon the bond later than three years after its cancellation. (§ 2 ch 100 SLA 1968; am § 1 ch 15 SLA 1977)

Effect of amendment. — The 1977 amendment added subsection (c).

Sec. 08.18.081. Claims against contractor. (a) A person having a claim against a contractor for any of the items referred to in § 71 of this chapter may bring suit upon the bond in the superior court of the judicial district in which the work is done or of any judicial district in which jurisdiction of the contractor may be obtained. A copy of the complaint shall be served by registered or certified mail upon the commissioner at the time suit is filed and the commissioner shall maintain a record, available for public inspection, of all suits commenced. Two additional copies shall be served upon the director of the division of insurance with the payment of $5 to the director taxable as costs in the action. This service upon the director shall constitute service on the surety and the director shall transmit the complaint or a copy of it to the surety within 72 hours after it has been received. The surety upon the bond is not liable in an aggregate amount in excess of that named in the bond, but in case claims pending at any one time exceed the amount of the bond, the claims shall be satisfied from the bond in the following order:

(1) labor, including employee benefits;
(2) taxes and contributions due the state, city and borough, in that order;
(3) material and equipment;
(4) claims for breach of contract;
(5) repair of public facilities.

(b) If a judgment is entered against the cash deposit, the commissioner, upon receipt of a certified copy of a final judgment, shall pay the judgment from the amount of the deposit, in accordance with the priorities set out in (a) of this section. (§ 2 ch 100 SLA 1968; am § 9 ch 127 SLA 1974)

Effect of amendment. — The 1974 amendment, in subsection (a), inserted the present third sentence and inserted "upon the director" and substituted "director shall transmit" for "commissioner shall transmit" in the present fourth sentence.

As the rest of the section was not affected by the amendment, it is not set out.

Legislative committee report. — For report on ch. 127, SLA 1974 (SCSHB 817 am S), see 1974 House Journal, p. 657.

Sec. 08.18.091. Cancellation of bond. Nothing in this chapter impairs the right of a bonding company to cancel its bond of a contractor for lawful reasons. (§ 2 ch 100 SLA 1968)

Sec. 08.18.101. Insurance required. Each applicant, at the time of applying for registration, shall file with the commissioner satisfactory evidence that the applicant has in effect public liability and property damage insurance covering his contracting operations in the sum of not less than $20,000 for damage to property, $50,000 for injury, including death, to any one person and $100,000 for injury, including death, to more than one person. (§ 2 ch 100 SLA 1968)

Sec. 08.18.111. Advertising bond and insurance. — No contractor may advertise that he is bonded and insured simply because he has complied with the bond and insurance requirements of this chapter. (§ 2 ch 100 SLA 1968)

Sec. 08.18.115. Return of cash deposit. (a) A contractor who has filed a cash deposit and who ceases doing business as a contractor may request the return of as much of his cash deposit as is held by the commissioner by

(1) filing a notarized statement with the commissioner that he has ceased doing business as a contractor; and

(2) filing a notarized statement with the commissioner at least three years after filing the statement in (1) of this subsection which

(A) requests return of the cash deposit;

(B) certifies that the former contractor has not been engaged in business as a contractor for at least three years; and

(C) certifies that to the best of his knowledge no action has been commenced upon the cash deposit which has not been dismissed or reduced to a final judgment which has been satisfied.

(b) The commissioner, after paying any judgments against the cash deposit under sec. 81(b) of this chapter, shall return the remainder of a former contractor's cash deposit to him if

(1) the former contractor has complied with (a) of this section; and

(2) no action has been commenced upon the cash deposit which has not been dismissed or reduced to a final judgment which has been satisfied. (§ 2 ch 15 SLA 1977)

Article 3. Enforcement.

Section		Section	
121.	Suspension and revocation of registration	141.	Misdemeanor
131.	Injunction	151.	Legal actions by contractor

Ombudsman

Frank Flavin

State of Alaska
360 "K" Street, Room 246
Anchorage, Alaska 99501

(907) 276-4011

October 20, 1977

Eric Lee, Director
Division of Community and Rural Development
Department of Community and Regional Affairs
Bayview Commercial Building Suite 230
619 Warehouse Avenue
Anchorage, Alaska 99501

Re: Ombudsman Complaint 77-1421
(Findings)

Dear Mr. Lee:

Please be advised that the above-noted complaint has been investigated and has been found to be a partially-justified complaint. However, based on conversations with my assistant, I believe we can come to a mutual agreement regarding future action in this case.

The complaint, filed by Dr. Frank Gold of Fairbanks, alleged that your office improperly and unfairly prevented him from obtaining a contract to administer the Day Care Assistance Program within the area of the Fairbanks North Star Borough. Letters from your office to the Borough Assembly and the Borough Mayor became the basis upon which that governmental body determined not to award a second year's day care contract to Dr. Gold.

Dr. Gold has charged that action, based on erroneous grounds outlined in the letters, was an abusive overextension of the State's authority in administering monies for the program.

We have reviewed the files, both in Anchorage and Fairbanks, interviewed several administrators of the day care program, Community and Regional Affairs personnel, Fairbanks officials, day care assistance recipients, and of course, Dr. Gold.

As the entire complaint and resulting situation is to be considered by the Borough assembly again soon, we find it appropriate, and hopefully helpful to all parties, to detail the history of this day care assistance administration in Fairbanks; our findings regarding the Division of Community and Rural Development; and our recommendations, based on those findings. Our intent, by means of the recommendations, is

ATTACHMENT # 9

to afford an impartial look at the record, set that past record straight, and hopefully, to suggest improvements for this needed program.

SUMMARY OF BACKGROUND RECORD

After the Fairbanks Borough determined there was need for day care assistance, as provided for in AS 44.47.250, the Borough began implementing its own program through funds provided by the Department of Community and Regional Affairs.

The program was administered directly by the Borough through the end of 1976. Due to a transfer of the Central Child Care Coordinator's office from Juneau to Anchorage in the summer of 1976, a timely approval of the FY 1977 Day Care Assistance grant to the Fairbanks North Star Borough was not possible until September, 1976. In a letter dated August 26, 1976, F. Harvey Pitts, the Child Care Coordinator, stated he had received the application for the next year's program funds. At that time, he said the proposal "appears in order and has my approval", but said until the final authorization came through, he would extend the FY 1977 contract to the end of September, 1976. It is important to note here that a copy of that letter was sent to Dr. Frank Gold, who had previously signed a contract with the Borough to begin administering the Day Care Assistance Program on July 1, 1976. Although the FY 1977 contract from the Department to the Borough was not finally approved until September 24, 1976, it was backdated to become effective July 1, 1976.

The Borough, State and Dr. Gold's files all are in agreement that Dr. Gold began administering the Day Care Assistance program in July of 1976. He had not solicited the contract, but rather, he had been approached and asked by borough officials if he would be interested in a contract. He was interested and soon took over full administration of the program.

Regarding legislative intent corcerning the statute requiring the Department's permission prior to subcontracting, the record and your recollection of this provision indicate the inclusion was aimed at rural areas. Fairbanks is not a rural area, but the law does not distinguish a difference, between urban and rural areas, thus letting the Fairbanks Borough Assembly opt for subcontracting.

In FY 1977, (contract signed in September, 1976) there was no discussion of the merits of in-house versus subcontracting the program, nor was there any request or demand for permission to subcontract. The reading of the law at the time and the

interpretation up until this past May was that "permission to subcontract" meant the State could allow a municipal government to move the Day Care Assistance Program administration out of its own offices and subcontract. The involvement the State had in the actual subcontractor choice was negligible, at least according to the Borough's interpretation and the 1976 experience.

After a month and a half of program administration, Dr. Gold found he had more applicants than he had anticipated money for the rest of his contract term. Part of this reason was the expressed desire of the State that the program be advertised widely in the North Star Borough area. And, examination of the contract, the regulation manual and the statute are in conflict regarding what the responsibility of the administrator actually is in meeting the demands of all those applicants that qualify for the assistance.

The statutes potentially (from AS 44.47.250 through AS 44.47.3.0) allow for the Department to establish guidelines for parent eligibility, provides for subcontracting the assistance program administration, and sets out the parent responsibility in finding a licensed day care facility for his or her child. It does not directly address how eligible families are to be cut from the program.

The Day Care Assistance Manual (page 2) states: "It is not the purpose of this program to provide free day care to all qualifying for assistance. Current funding does not permit the State to subsidize all eligible families; therefore, lower income families will be given priority."

The contract between the State and the North Star Borough as well as the subcontract between the North Star Borough and Dr. Gold, however, both contain the following section (5) as part of Appendix A, which is to be considered a part of both contractual agreements:

"(5) The contractor agrees to serve all families with reasonable access to licensed day care facilities within the Fairbanks North Star Borough."

Observing that he had reserve money to fund AFDC and WIN recipients, and in light of the aforementioned conflict in interpretation limiting subsidies amongst eligibles, Dr. Gold chose to exercise the flexibility called for in the Day Care Assistance Manual's stated purposes and goals of the program. These purposes, directly quoted, are:

"The act gave responsibility for administration of the program to the Department of Community and Regional Affairs in the hope of encouraging local government participation in the delivery of day care services.* The Department will contract with local communities for direct program administration in order to allow as much local responsibility as possible while assuring the requirements of the law are met."

Where the law gave the department responsibility for allocating its appropriated funds, it also allowed -- and actually encouraged where applicable -- the local governments to subcontract to a local administering agency. The law (AS 44.47.250 (b) (2)) requires C&RA's permission to subcontract; the manual and subsequent contracts call for that permision to be in writing.

Less than one month after the State and Borough had firmed up their mutual contract for FY 1977 funds (on September 24, 1976), Dr. Gold determined that the contractual amount would be far short of the Fairbanks North Star Borough's demand. On October 18, 1976, he wrote to Pitts requesting an additional $70,000 to $100,000 to meet the needs projected for the entire fiscal year. Pitts responded in an October 20, 1976 letter that an additional $22,125 was allocated to the Fairbanks program. He stated, "The problem is, of course, insufficient funding to accommodate all persons eligible for Day Care Assistance." He further suggested that a maximum monthly mean subsidy be established as a monthly ceiling. This would allow for continued funding of AFDC families for the entire year. Pitts stated that after the additional October allocation, there would be "no more additional funds which can be made available" to the Borough during fiscal '77. He suggested that to stay within the monthly ceiling allocations, Dr. Gold curtail assistance beginning with those recipients in the higher income groups.

On October 26, 1976 (or two days after receiving Pitts' letter), Dr. Gold computed a monthly average and sent out a letter to some of the recipients that their assistance would be dropped November 1, 1976. Copies of this letter were sent to both Pitts and Helen Blevens, the Borough's Treasurer.

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* This is consistent with the statutory powers and duties of C&RA "to advise and assist local governments" (AS 44.47.050 (1); and to supervise, monitor, and otherwise help make local governments eligible for State, federal and other grants.

That letter, which became the form for future notification of other applicants who would have to be dropped to allow Dr. Gold to stay within his monthly mean averages, included the following paragraph:

"Due to the inadequate amount of funds provided to the Fairbanks North Star Borough Day Care Assistance Program, it is impossible to continue funding all day care payments for the entire year."

Pitts' Anchorage file shows this copy with no corresponding letter even mentioning--much less criticizing--the explanation Dr. Gold was using.

More low income applicants continued to apply for new Day Care Assistance, thus mandating Dr. Gold to rework his allowable "eligibles" list to stay within his monthly mean. In order to continue giving priority to applicnats with lower incomes, even if they were newer applicants than some other higher income eligibles still getting subsidies, Dr. Gold had to revert to cutting off new groups of eligibles within the higher income brackets. This is his understandable explanation of the necessity of staggered elimination of higher income group recipients as the fiscal year progressed.

Admittedly, the above was not his only reason for delaying notification of those who eventually were cut from the program with only a few days' notice. Dr. Gold operated under apparently acceptable interpretations of the cortractual terms of serving all eligible families in the Fairbanks Borough area and under the expressed C&RA desire for local flexibility. Dr. Gold considered this short notice (which caused some admitted hardships) as serving the client community until he was forced to cut them from the program. His explanation is that at least four Fairbanks legislators were openly working to expedite a speedy supplemental allocation to the Statewide program, with special attention to the Fairbanks plight.

More money from within C&RA was forthcoming on February 10, 1977, when Pitts and Dr. Gold discussed the new availability of $18,054 which came from unspent day care assistance money not used by another community. With the initial $106,495 contract monies, the October $22,125 monies and this new February allocation of $18,054, the Fairbanks North Star Borough allocation was a total of $146,674. This figure was still some $55,000 short of Dr. Gold's first forecast of the Fairbanks day care needs of $200,000 in early fall--and about half his January, 1977 forecast to legislators based on increased demands for the assistance from Fairbanksans.

The administration of the program by Dr. Gold was of no serious concern to the Department's Chief Day Care Coordinator, as is evident in the letter Pitts sent Gold confirming the above additional allocation. Pitts, in a letter dated February 18, 1977, stated, "As in the past, Frank, keep up the good work. I still plan to stop by and visit with you as soon as I can find the time to get out of the office."

File records show that Dr. Gold had incurred no major criticism by the Department, at least through Pitts' previously mentioned letter. The first signs of unrest due to Dr. Gold's management can be evidenced in your trip report dated February 9, 1977 (which was prior to Pitts' above comments of good work.) In that report where you detail discussions with Dr. Gold, you stated, "It is difficult to get the idea across that this is not a "welfare" type program where everyone who meets the guidelines is entitled to service . . . We must address this as a political issue. I would strongly recommend against any supplemental appropriations to Fairbanks or other communities. In my opinion, a supplemental would be rewarding poor planning and mismanagement and penalizing those communities who have conducted a responsible program. They wanted flexibility and authority but are quick to shirk responsibility for problems created . . . We need to work more closely with the grantee communities in preparation of the FY '78 program to avoid a repeat of this years problems."

Ironically, it is about this time when Dr. Gold and other day care administrators Statewide began to address this funding supply as a political issue also. They began intense lobbying with their respective legislators for more funds to last the FY '77 year. And since Pitts' letter followed your report to Commissioner McAnerney (with no subsequent comment to Dr. Gold), we cannot assume he was placed on any notice for rectifying any major or minor concerns you expressed.

Shortly after this public testimony before the legislature, apparent conflicts arose between the day care administrator (Dr. Gold) and the Department. After one visit by the Department's field officer (Jan Brewer) on March 30th, several errors (according to Brewer's March 31st field report) were noted in the administrator's operations. Since Dr. Gold had just hired a new program administrator, Brewer recommended that a subsequent visit to the Fairbanks office take place within a month to better review all the files

after the new program person was more familiar with the job and files.

Brewer returned to the Fairbanks office on April 11, 12 and 13, at which time relations between the local administrator and the agency deterioriated significantly. Dr. Gold, who admits he was made aware of the impending visit by Brewer, was reluctant to allow her access to any files, except the terminated ones, until his program assistant returned to work. He had said his assistant was out sick and Brewer reviewed only the closed files. The next day, (April 12) the assistant was still out sick and Brewer was denied access to the files. She had reminded Dr. Gold of Article VII in his contract with the Borough that mandated the files be open to the Department during regular business hours. Whether Dr. Gold opened his files to her on the following day (April 13) due to the fact his assistant had returned to work or because Borough Treasurer Helen Blevins had called him (at Brewer's request) to mandate Dr. Gold open the files (or a combination of both) is a matter of interpretation. In any event, the files revealed some audit exceptions.

Of the $3,068 in auditable exceptions which Brewer reported on return from her April visit, $822 were cancelled by the Department when adequate back-up paperwork was provided. Of the remaining exceptions, it is unclear where the responsibility falls in regards to the errors as the Borough paid at least portions of those exceptions. According to Borough Administrator Ron Garzini and Dr. Gold, several of the exceptions were based on miscalculations made while the Borough still administered the program in-house. Dr. Gold has stated he has not paid any of those audit exceptions in question.

Shortly after the April staff visit, Dr. Gold received a copy of a letter written by Pitts to Blevins in which he outlined the disallowed audit exceptions and detailed the problem regarding access to the files. The letter did not outline actions which Pitts thought were mandatory to insure continuation of the program with Dr. Gold nor did Pitts notify Dr. Gold of the severity of the actions in regard to denying access to the files. We refer here to the Department's Day Care Assistance Application Manual; Page 19, Article 5 of the Department's responsibilities in this program:

"5. When the Director finds that the local agency is not in compliance with the work program and contract, he shall notify the agency of the problem and the requirement for compliance. If after a reasonable period satisfactory

adjustments are not made, he shall notify the agency that further payments will be withheld until the deficiencies are corrected."

Pitts' April 19 letter to Blevins, however, prompted Dr. Gold to fire off a rather inflammatory letter to Commissioner McAnerny asking that Pitts apologize for the letter, and for Pitts' failure to talk with Dr. Gold before concluding Dr. Gold was in the wrong. Dr. Gold recalls hand-delivering the letter to the Commissioner on April 26.

Dr. Gold received no response from the Commissioner, nor did he receive any letter from Pitts. However, the Anchorage file shows an interesting (however irrelevant) memo from Pitts which carries a date of April 27. It concerns a proposal by Dr. Gold for a drug abuse grant he applied for in another department--the Drug Abuse Office. The memo was initially written by Pitts on non-ordinary stationery and the copy in the Anchorage file we copied, shows a stamp as having been received by the Drug Abuse Office on May 16, 1977. The memo was written to McAnerney, but the only paragraph to mention Pitts' involvement with Dr. Gold in the day care contract experience vaguely questions Dr. Gold's management of the day care program and Dr. Gold's refusal to allow Brewer access to the files. The last paragraph recommends the following:

"I recommend that the A-95 Grant Request referenced above be denied and that a search be undertaken for a more suitable Drug Abuse Program Administrator."

During the same time Dr. Gold was testifying against C&RA day care proposals in front of legislative committees, the Department began collecting a variety of paperwork regarding Dr. Gold's other involvements.

For example, in the Anchorage day care assistance file on the Fairbanks program, there are some 61 different documents (at least as recorded in September by my assistant, Cathy Allen). Of those 61, 31 documents deal with subjects other than the day care program. A large portion detail problems and criticisms other people had with Dr. Gold's proposed mental health clinic. Eight other pieces of paper dealt with Borough zoning problems--some dating back two years.

Barbara Morse, a Departmental employee directly under your supervision, was also receiving day care assistance through Dr. Gold's administration. She had recorded problems with Dr. Gold's administration of the program as he had required more back-up paperwork in order to adjust the level

of her income to what she thought was appropriate. The problems with her individual subsidies were not major ones, but it does cloud any involvement she might have had in discrediting Dr. Gold's administration of the program. Borough officials have reported she inquired about several different problem areas, including whether or not proper advertisement had preceded the request for new bidders. In the meantime, John Swan had also been interested as a potential administrator and Morse had been working to interest Swan in the day care program administration. He had been running a day care facility where Morse had taken her child. When you traveled to Fairbanks for your May 19 meeting with Blevins, Morse was in attendance.

That same trip report includes the following statement: "it was the borough's responsibility to monitor the activities of their subcontractor." You also stated, "that we would be very reluctant to approve a subcontract with Dr. Gold for next year, and recommended that they heartily consider operating the program in-house next year."

Regarding Brewer's field report from the next departmental trip on May 31, she reflected a much brighter picture of Dr. Gold's operation of the program. Although she details one case where a family had to have its payments terminated and the notice was somewhat short and indirect (the day care center was informed), the incident prompted her recommendation that a form and standard termination notice be worked out.

This Brewer report appears to contain other unfavorable impressions concerning Dr. Gold, but no examples were provided; they were requested for the future. Brewer's report states of Dr. Gold's administration of the program that applications were now complete; the back-up data was in place and no other close monitoring would be required before the "contracts are ready for renewal."

In the "Effectiveness of Program In Meeting Goals," Brewer wrote, "The program's effectiveness apparently has improved since the last visit. Applicants are now more carefully screened and clients are not being assisted at correct percentages for their income group."

To maintain a proper perspective, we should point out that the April field trip report with the same evaluation forms, detailed several problem areas: audit exceptions, refusal to allow access to all the files, files were incomplete, etc. To adequately insure we don't overlook that report, we have also included a copy of it as an attachment. The point is that

with the prior report or without it, Dr. Gold's administration of the program as is reflected by Brewer, certainly improved.

There are two final letters (one June 24 and a second dated July 25) which culminated in the Borough's action of not awarding a contract renewal to Dr. Gold.

On June 24, you responded to a June 22 letter from Fairbanks Mayor John Carlson which indicated the Borough's intent to apply for day care funds for fiscal 1978. This letter includes the following paragraph:

"Alaska State Law (AS 44.47.250) allows the borough to subcontract its obligations only with the consent of the Department of Community and Regional Affairs. The Department in examining and evaluating the appropriateness of the grant application, must weigh the commitment, the plan and capabilities of the Borough in administering the program."

It also states:

"Unless the borough can present evidence to indicate and guarantee a significant change in the program management by Dr. Gold that will assure a proper level of performance, the Department will not grant approval to the Borough to subcontract.

Prior to this letter's arrival on Mayor Carlson's desk, the borough had informed Dr. Gold that he was the only agency that responded to the Borough's request for bidders. He was told that he would receive the contract though no official paperwork had been signed. The mayor then informed Dr. Gold of the Department's letter.

Dr. Gold took great exception to your letter in public testimony. The Borough opted to operate the program in-house until it could gather more information about the entire matter and seek proposals from others who might also wish to administer the program. Garzini, in public testimony said had there been no letter from C&RA threatening a discontinuation of the day care assistance funding with Dr. Gold, he would have had little objection to the Borough's renewal of the contract with Dr. Gold.

In a July 25 letter from your office, you further outline other problems with Dr. Gold's past administration of the program and offer the following:

"Subsequent to our initial rejection, the Department has become aware of many other circumstances related to Dr. Gold and his other business activities, contracts and zoning

problems which would preclude Dr. Gold from being acceptable as the administrator of this program under any conditions."

Since that second letter, the borough has requested and accepted applications from six sources. These applicants all presented proposals for the day care program's administration based on new proposal guidelines that we feel your agency properly assisted in developing. Certainly, with this relatively new program, guidelines for those who might administer the program would be hard to develop based on no prior experience. Also, since your office has noted problem areas--not only in Fairbanks but Statewide--it is appropriate you should assist the local governments in proposal guidelines.

Dr. Gold has since charged the nature of these guidelines was such that it sought to exclude him. Since some valid concerns with his administration of the program prompted such proposal guidelines, we do not find your involvement here to be faulty.

Presently, the Borough is operating the day care assistance program in-house, awaiting the settlement of this Ombudsman complaint, as well as other factors (such as the local election) before opting to award a contract to any of the six proposal applicants (which includes Dr. Gold).

According to Phil Younker, the Borough will take action--one way or another--on this matter in the near future.

FINDINGS:

Pursuant to AS 24.55.150, we have found Departmental actions: 1) to be arbitrary regarding the enforcement of rules set out in the Day Care Assistance Manual; 2) to be based, in part, on improper grounds; 3) to be unfair, procedurally; and 4) unreasonable in the scope of information and materials collected in regard to Dr. Gold.

A. Actions Found to be Arbitrary

In many areas, you have held Dr. Gold accountable for following rules and procedures outlined in the Day Care Assistance Applications' Manual (which was made part of the contract to the Borough and also the subcontract to Dr. Gold). His refusal to allow Brewer access to files; exact compliance with the subsidy scale; required back up information for each applicant; his determination of who should continue to receive subsidies and who should be cut off; and the Borough's failure

to secure written permission from your division are all covered in the contract and/or manual.

Yet, page 19, article 5 of the manual calls for the Director (identified as you by manual definitions), to notify the agency (identified as Dr. Gold by means of the same manual definitions) of those problems inconsistent with either the work program or contract. If "after a reasonable period satisfactory adjustments are not made" the Director is then to notify the agency that payments will be withheld until the deficiencies are corrected."

Notification of the audit problems went to the Borough Treasurer almost immediately upon Brewer's filing of her trip report. The money was to be immediately withheld and Blevins was warned of the seriousness of Dr. Gold's refusal to allow the C&RA field worker access to all the files. No notice for compliance was given Dr. Gold.

B. Actions Found to be Based Upon Improper Grounds

The July 25 letter to Assembly Chairman Dave Brennan specifically outlined six major criticisms you defined as problems with the day care program administration by Dr. Gold. We find fault with four of those items discussed.

Item #2 and Item #4

We would like to couple Item #2 and Item #4 together as they are similar in our comparison of the facts regarding both. These criticisms deal with the original grant ceiling for the program being $106,495; that Dr. Gold should have apportioned an equal amount each month for the program's subsidies so that the money would last the year; that there was no mandate to serve all "eligibles" (as you allege is clearly stated in the contract); and that his expressed shortcomings due to improper training is invalid due to four trips made by your staff for auditing and training purposes.

First, we find that although the original grant amount was $106,495, Dr. Gold had been told from the start of his administering the program that there would be more money available. Pitts had told him that pending reports from other communities regarding whether these other areas would be able to use their allocated day care funds, more money would become available. Extra money was already accumulated from communities which could not get a program established for fiscal 1977 by the time Dr. Gold took charge of the Fairbanks program.

Dr. Gold chose not to apportion money on a month-to-month average, which was reasonably his prerogative based on the manual, law and contract (plus subcontract). The contract does not state, as you say, "that not every eligible person in the Fairbanks area must or should be served". The contract (in Appendix A) states that the contractor "agrees to serve" all families with reasonable access to licensed day care facilities in the Fairbanks area. The contract states just the opposite, according to our reading, of what you list as its clear statement regarding who should be served.

Whether or not Dr. Gold chose to apportion his total amount on a month-by-month average seems to fall in the category of local flexibility. How else would you interpret Pitts' suggestion that a monthly average be determined and adhered to as was stated in his October 22 letter to Dr. Gold? As long as Dr. Gold held enough money aside for the total subsidizing of WIN and AFDC recipients, then he was not in violation of the contract, according to our review. And, as new applicants qualified as eligibles and had lower incomes than those still receiving subsidies, we believe Dr. Gold was following the priority expressed by the law, guideline manual, contract and subcontract to favor lower income eligibles.

Finally, the lack of training or auditing Dr. Gold alludes to as reason for his shortcomings in administration of the day care program is difficult to determine as valid or invalid. You indicate that he cannot blame base line data projections as his basis for not terminating higher income eligibles. From the first moment he realized he would run short on funding for the year at the maximum subsidizing of all those eligibles, you indicate he should have averaged out his funds based on a month-to-month average. Since the funds did increase (and he had confidence there would be more coming) and there were more new applicants with lower incomes applying for subsidies, we believe Dr. Gold showed a management plan that was not prohibited by his contract--nor even criticised by your agency until after he had terminated many of those on the program under his plan of serving as many as he could as long as he could. Regarding training and auditing help, the field trip report for October only states that Dr. Gold wasn't able to make a meeting. Your February report does not mention any training or auditing other than your attempt to bring home the point the program was not "a free lunch". (And, Dr. Gold's records show the meeting as more of a strategy one for the legislative effort for supplemental

and fiscal 1978 funding of the program). Brewer's March report allows that new staff were on baord and that she would await that staff's familiarization with the back files before auditing. The April field report was covered above and the May report also indicates the Department's action in training Dr. Gold's staff and auditing the Fairbanks files. Proper training and auditing prior to the acknowledged problems in April are hard to detail in light of the field reports on file.

Item #5

The letter to Brennan questions Dr. Gold's method of cutting eligibles from the program; the short time frame in notifying eligibles that they are being cut; the explanation used in the form letter; and the lack of proper monitoring and analysis. The latter, you theorized, might have resulted in fewer cutbacks sooner and addition of new eligibles with lower incomes through natural attrition. Dr. Gold, however, cut eligibles, upon your October suggestion of terminating those from Group V, the Group IV, the Group III, etc. The time frame was short as he expected more funding and exercised his local management flexibility to keep eligibles in the program until the last moment. Regarding the misleading explanation you fault, Dr. Gold had sent the same letter terminating eligibles three different times (with copies to Pitts each time) using the same standard form letter he initiated in October for the first cut-off. No criticism was voiced until your July letter. Had Pitts voiced his concern over the explanation Dr. Gold used, it is likely (according to Dr. Gold) that the form letter would have been changed. Additionally, in the October 20, 1976 letter from Pitts which preceded Dr. Gold's first form letter, Pitts declared the problem "is, of course, insufficient funding to accommodate all persons eligible for Day Care Assistance." Dr. Gold's terminology to recipients of day care subsidies was, "Due to the inadequate amount of funds provided to the Fairbanks North Star Borough Day Care Assistance Program, it is impossible to continue funding all day care payments for the entire year." We don't find the two explanations significantly different.

Since it was (by contract and manual guidelines) the responsibility of both the Borough and the State to "monitor" the local program, we find it inconsistent to solely fault Dr. Gold with failure to properly monitor the program with regard to analyzing the list of eligibles in time to cut higher income eligibles to accommodate new applicants with lower incomes. In fact, the Borough received notice of its

monitoring problems, but the actual local administering agency (Dr. Gold) received none. Also, Dr. Gold's records show no natural attrition where he could have added those new eligibles in question with lower incomes.

Item #6

Here, you report that there were several audit exceptions "for which the borough is financially responsible." You further stated these exceptions "were due primarily to inadequate and inaccurate applicant screening on the part of Dr. Gold's staff". This is not true, according to your files and those of Dr. Gold, as well as information from Garzini. Your contract with the Borough and the subsequent subcontract with Dr. Gold holds the administrator responsible for problems in subsidy eligibility. The Borough paid all the audit exceptions that weren't adjusted after back-up information was obtained from the eligible applicants. Although Garzini states that Dr. Gold paid "a negligible amount" of the exceptions, his files show he paid none. Garzini clarified that most of the exceptions could be traced back to screening work done by the Borough when it first began the program--before Dr. Gold was contracted for the program's administration.

Information regarding the timely filing of monthly reports is difficult to detail except that the departmental files show the reports were late. Exactly how the reports should be filed, and what route each report should take through what local, Borough and State offices is unclear, but it is our finding that these reports were received in your offices late in at least three cases.

C. Action Found Unfair

Even if all the above criticisms and problems with Dr. Gold's administration of the Fairbanks program were accurate, we find it unfair to notify Dr. Gold (and at that, notify him indirectly through a letter to Mayor Carlson) of his total unacceptability for a contract renewal after the Borough has asked him to submit a letter requesting a contract renewal.

We have considered your argument that it was easier not to inform Dr. Gold of each problem as it arose in the hopes he would become a more conscientious administrator as time went by, but it, nevertheless, came as a surprise to him that you would not accept him as a subcontractor. Dr. Gold, and several other agency and local officials, certainly admit there were conflicts of philosophy between him and the Division. All admit there were deep personality conflicts (evident in Dr. Gold's letter to the Commissioner of April 26 and

Pitts' letter to the Commissioner of April 27). The Borough obviously did not think the problems so severe that they would not have rejected the contract renewal with Dr. Gold. Dr. Gold, after Brewer's May 31 trip, did not think his administration so faulty that a contract renewal would be jeopardized or, he felt, he would have received some feedback, as the Department certainly had been vocal about the program in the past few months.

In addition, Brewer's last field report shows Dr. Gold as improving, though each piece of correspondence from the State to the Borough gets progressively worse in its assessment of Dr. Gold's operation of the day care program in Fairbanks.

In the interest of making the Fairbanks program viable, it is understandable your field worker would attempt (and is evident by her continued patience) to try and correct problem areas as opposed to confronting Dr. Gold and his assistants with each error or criticism. But this same patience also lent to the lack of due process we feel Dr. Gold should have been afforded according to the manual procedures which call for the Director's calling attention to contract and work program problems.

Brewer's last comments in the May field report that additional monitoring in person was not necessary until the "contracts are ready for renewal", raises an inference that the subcontract to Dr. Gols would be acceptable.

The paragraph precluding Dr. Gold from "being acceptable as the administrator of this program under any conditions" based on "other circumstances related to Dr. Gold and his other business activities, contracts and zoning problems," is an unreasonable statement concerning Dr. Gold. The paperwork in his Anchorage file regarding establishment of a new mental health association for possible State grant funding does not show any positive letters about the fledgling group (which is now in the final stages of being approved for funding). The Borough zoning problems you allude to are being pursued through the court system. The "other business activities" reflected in paperwork in the file could include the proposal by Dr. Gold for continued grant allocations for drug treatment programs. Although Pitts' letter pointed out problems with his proposal, Dr. Gold received another year's funding approval just recently. And last, references made by Pitts to my assistant about other "alcoholism" grants awarded Dr. Gold that might interfere with day care recipients using Dr. Gold's same premises,

simply do not exist. He does not now have (nor has he had recently) any alcoholism programs which he is running or administering.

It is in addition to the voluminous paperwork in our files that are not direcly germane to the day care program's administration; the somewhat unprecedented letter by Pitts regarding Dr. Gold's drug abuse proposal; the harshness about Dr. Gold's running the program, as is reflected in your letters at the same time his field report evaluations by Brewer were showing improvement the questionable involvement of staff in Fairbanks; and the cloud of doubt by the non-specific paragraph cited above that prompt us to find your agency's actions unreasonable. These unreasonable statements figured heavily in Dr. Gold's not being awarded a second year's subcontract for the Fairbanks North Star Borough Day Care Assistance Program.

AGENCY ACTION JUSTIFIED

A. Statewide perspective needed and obtained through C&RA monitoring

Since the entire amount of day care assistance monies comes from the State with no federal matching monies, the State is in the best position to judge Statewide need and it can best ascertain how the money should best be allocated to the different programs. Through surveillance and monitoring, it is in a better position to determine how any one program measures up to another. In this regard, it was indeed proper that C&RA did outline all problem areas; we only would ask that more time be afforded in reviewing the cited grounds presented to the Borough Assembly as background for the action against Dr. Gold. Careful review of the Department's file would have cleared up the most serious and certainly the majority of problem areas cited.

B. Program problems properly outlined by the agency

The untimely filing of monthly reports, the refusal to allow field workers to review day care assistance recipient files at any time during the work day, as well as smaller, case-by-case details that required clarification or more attention are best brought out by the State agency. In some cases, the local government might not watch nor wish to closely monitor a program. The State, which has the background and knowledge of program administration throughout the State, is in a better position to pick up administrative

details that could tighten any single rural or urban program's administration. It would appear that at least some minor paperwork sloppiness as well as the lack of file access were proper criticisms for whatever reasons.

C. Suggestions for future program proposal advertising and proposal guidelines proper and helpful.

The mere questioning of how the contract was advertised in May was appropriate and suggestions for future advertisement were proper. It is possible that the Borough did not think any other local agency would be interested in the day care program's administration as the local government had initially approached Dr. Gold and asked him to administer the program in July of 1976. If the State were made aware of other potential candidates for the administration, it is their duty to inform the local government of such concern. Also, the guidelines for future subcontractors as recommended and mutually-worked out by the Borough and the agency were appropriate. The role of the State in carrying out its statutory authority in this program is primarily to assist the local governments--which it did in both questioning the form and extent of the advertising and working with the Borough on guidelines for future subcontractors.

D. However heavy-handed the C&RA action to discredit, the Borough chose not to challenge the State's authority and chose to accept its critical comments as basis for not renewing the day care contract with Dr. Gold.

If no fair comment had been afforded the subcontractor, we might have pointed out how unfair it was for a State agency--with all its implied power as a government authority--to barrel over a subcontractor. Obviously, given the advocacy talents of our complainant and the time he has been afforded before the Assembly to counter the C&RA comments, he was not precluded by the State from giving his side of the story.

The Borough may have based its action to nullify plans for renewing Dr. Gold's 1977 contract on the State's expressed authority mandating written approval of the exact subcontract. Or, the Borough may have based its action to readvertise the contract based on new guidelines worked out with the agency staff. Most likely, the Borough chose to accept the total accumulation of critical data from your agency along with your assertion that a subcontract with Dr. Gold would not be approved by them. The July 25 letter with the critical comments about advertising and the offer to work out better guideline proposals for subcontractors became the basis for

Dr. Gold's not getting a second year contract based on the old subcontract provisions.

In the same light, we feel it was the Borough's determination not to renew the contract, but that action was heavily based on your letter. Whether the Borough chooses to accept your authority is a matter of Borough or court jurisdiction. Whether the Assembly chooses to accept our analysis of the entire situation as a basis for reexamining their past action or future action is up to them. It is because we do not want to become overly involved in a related matter of municipal and State concern that we have offered these comments regarding action we think the State took that was justified and appropriate.

D. RECOMMENDATIONS

We hope that the review, as we have painstakenly presented it, will provide you with a careful enough review of the facts surrounding this complaint to weigh the following recommendations. It is my understanding that each recommendation has already been broached with you by my assistant. We hope these suggestions will provide you with meaningful alternatives that will tighten up the program's Statewide administration.

1. To straighten any confusion that might have been evidenced in this Fairbanks day care assistance program administration, we would suggest you begin the tedious but needed process of promulgating regulations, at least in the following areas:

A. What is the State's intent and interpretation of "permission to subcontract"? With that permission, is it then the responsibility of the Borough to determine the exact subcontractor? Other State agency examples provide for mixed interpretations as do court rulings on the authority of the State in subcontracting matters. Some rulings and agency examples reflect the contract law's strict interpretation of a due process of authority from the State to the contractor and the subsequent authority from the contractor to the subcontractor, with only minor connections from the State to the subcontractor.

B. In the application manual, it outlines how a day care assistance grant is made to a local government. However, the procedure of how one should obtain permission for subcontracting is not clear. For example, it calls for "written permission from the Department" for a

municipality to be able to subcontract. Yet, when should the permission, if so desired, be obtained? The application manual does not say, but alludes to subcontractor Articles of Incorporation as being necessary for the local government's complete grant application and possible approval. The manual also calls for subcontractor forms to be filled out after the grant is approved. Yet, with this complaint, the Borough was chastised for not seeking and/or obtaining prior written approval before it sent in the grant application for this upcoming year. One way or another, the procedure should be clarified.

C. Since the initial intent of the subcontractor option was to assist the particularly small communities, what kind of consideration should in-house vs. outside municipal subcomtract administration be given? Should a municipal government have to substantiate why it prefers to operate the program through subcontracts as you once intended? This clarification might be opportune now with other clarifications sought and, perhaps with the promulgation of regulations.

D. What does the Department infer by the local administering agency's responsibility to serve eligibles in the designated grant area? The confusion that exists through not addressing this point in the statute but addressing it rather contradictorily in the manual and the contract appendix should be clarified. It might make more overall management and planning sense to prioritize eligibles from the start of the fiscal year and apportion monthly subsidies to a determined ceiling, as now appears to be left up to the local government's or local agency's mandate to determine. If you believe the program better run (Statewide) by stricter management guidelines, then those should be clarified and made part of regulations.

E. Other specific areas brought to light by this inquiry stemming from the 1977 Fairbanks program experience should also be clarified in this review process. These areas include exact breakdown of State, contractor (or local government) and subcontractor (or local administering agency) responsibility. Appropriate termination procedures for recipients whose money begins to dwindle faster than anticipated; methods of accurately informing recipients in a properly-designated time frame to insure adequate time for easier adjustment; guidelines important for subcontractors' proposals Statewide, as well as advertising for new proposals; and a spelled-out monitoring effort regarding how problem areas are to be discussed, corrected, challenged and made a basis for disciplinary action should be readied.

Under litigation and court rulings regarding the applicability of the Administrative Procedures Act to agencies which have the permission to promulgate regulations (which you have in C&RA Day Care Assistance Program statutory authority--AS 44.47.250(b)(1), the courts have held that when you may promulgate regulations, you must.

Regulations for this program have already been discussed. Where we recognize a responsibility of your agency to establish some regulations to clarify the above-cited confusions, we would only suggest you begin work on these matters. However, if the line of agencies now awaiting regulations is too long to accommodate clarifications this year, we would suggest that the applications' manual include the needed clarifications. These additions and changes, as well as specific delineation of responsibilities might also--or might instead--be made a part of the applicable contracts and subcontracts. We are striving for equal enforcement of rules and regulations--no matter what form they should take.

An argument you have presented for not including all those points and matters within the policy manual as perspective regulations is the entire program's "armslength" attitude in its dealing with the general public. (Actually, we would like to see all manual procedures covered by regulation as the actual subsidy scale provides for the real flexibility you seem to desire in the program's administration.) Since a recipient's appeal is to Pitts' office, and since there have been recipients who have been penalized because the subsidy scale was not mandatorily followed by the administrator locally, we believe you have more of a direct link with the general public than your initial establishment of the program first indicated.

We would suggest, if you are considering these recommendations to tighten up on the mutual accountability of all agencies involved, that you expand your direct involvement with the public at large. More carefully outlining procedures and manual interpretations brings you into closer scrutiny by the public. We would suggest you further this involvement (not necessarily dramatically) and include selective recipient interviews in the field trips by your staffers. It is in this monitoring effort that you will get a more direct evaluation of a contractor or subcontractor's work effort.

As another step to involve the public, we would <u>suggest</u> public hearings or some public response mechanism where you might get the general response from State residents on the

matters outlined above. The public may have its own ideas about local versus State control and the guidelines for a contractor's involvement.

2. To clarify the record, which we hope we have detailed adequately to show problems with the grounds you cited for not wanting Dr. Gold involved in a subcontract for the day care program, we would recommend a clarifying letter be sent to Fairbanks Borough Mayor John Carlson and Fairbanks Borough Assembly Chairman Phil Younkers. We would hope the letter might explain the improper grounds we believe might have unfairly weighted Borough opinion against Dr. Gold. The same letter, we would suggest, also include a clarification of your apprehension of Dr. Gold as a future administrator. In talks with my assistant, you have indicated you would not protest Dr. Gold's acquiring of the contract (through criticisms or assertion of C&RA authority) if he were to abide by the guidelines worked out by you and the Borough staff. This explanation would be helpful in the recommended letter to the Borough Assembly and Mayor. Where we would appreciate a clarification of what we think are improper grounds, we would also offer that other proper grounds about Dr. Gold's administration of the program would appropriately be forwarded in this same letter. Assistance in the form of comments about other proposed administratiors would also be pertinent and proper here, we feel. Suggested monitoring efforts that might correct future problems while still insuring the Borough and local administering agency the right to due process could be included in this same proposed letter.

3. We would suggest a letter to Dr. Gold, although a copy of the above letter to the Fairbanks Borough would be appreciated as an alternative. Acceptable guidelines that would allow him to obtain the contract without any State controversy should the Borough opt to contract with him again, should be specified in this second letter. A forward, clear assessment of his past performance as an administrator; day care program spokesman before the legislature; and outspoken public critic of the Department would appropriately be outlined in this letter. And, by means of this complaint resolution, perhaps a future meeting between you, Pitts, Dr. Gold, the Commissioner and appropriate Borough contracts could take place to iron out personality conflicts that might remain.

SPECIAL FINDINGS

In the perusal of the file, we took special note of the letter Pitts forwarded to Commissioner McAnerny regarding Dr. Gold's early spring proposal for drug abuse funding. Through the A-95 grant approval process (those being specific funds administered through the State), grant proposals are routinely circulated throughout sister agencies in the hopes that others having dealt with proposed contractors will comment about the contractor in question. The process, although still somewhat rudimentary and selective in the circulation of proposals, is a good one.

The State should have a central information system which would allow cross-referencing and more complete examination of contractors. In this case, comments forwarded by Pitts, however, lead us to examine this process more closely. We find no problem with the concept of cross review of contractors' past performances within the evaluating agency. But, Pitts' assessment of Dr. Gold's proposal is inappropriate. The two-page evaluation (for reasons we have not been able to justify) recommends that another contractor/administrator be found for the Fairbanks drug treatment program. In the six lengthy paragraphs critical of Dr. Gold's drug program proposal, only one paragraph deals with Pitts' direct dealing with Dr. Gold through the day care program he actually oversees. The memo to C&RA Commissioner McAnerny was written on April 27 by Pitts--a day after the Commissioner was hand-delivered an inflammatory letter by Dr. Gold about Pitts' actions in regard to Brewer's controversial field trip to Fairbanks in April.

As there are no regulations, laws, procedures, or even standard practices exercised in the review of A-95 grant application proposals, we cannot find direct fault in Pitts' action except to say it was inappropriate.

Since the comments apparently did not get to the Drug Abuse Review Board in time for their full consideration and since they chose to award the contract to Dr. Gold for this upcoming year, we suggest no future action in this matter. We do feel that the process of cross referencing evaluations be reviewed toward insuring objectively, accountability and due process so that a valuable tool does not become a "blacklist".

We would recommend that future evaluation by C&RA staff of A-95 proposals be restricted to specific past

involvement with the contractor and that it be as precise as possible. Hopefully, through central agency, the Division of Policy Development and Planning personnel, there will be adequate response mechanisms afforded the contractor in question so that a fair evaluation is afforded by the State.

In summary, we hope this exhaustive look at the record has been helpful in your own review of the inquiry to our office by Dr. Gold. We have given much thought to the recommendations and options presented for your consideration in the hopes of bettering the program while setting the past record straight. In constantly weighing the findings and recommendations, we have attempted to set reasonable goals, which we believe are not arbitrary, given your initial discussions with our office last month. Please let us know if you have any questions or comments. We would like some response, even if it is an oral response within a week.

We are forwarding the exact copy of these findings, except for the section which details the staff situation and the details of any specific day care recipients as those names are confidential, to Dr. Gold, the complainant.

As everything but the names and files of day care assistance subsidy recipients are already part of the public record, in light of our prior consultation with you in regard to this matter, and the Borough's involvement as the prime contractor, we will make this report available to the Borough pursuant to their request as is outlined in the letter attached from Mayor Carlson. We will do this unless you have a reasonable objection to this procedure. If so, please give me a call this weekend (October 22 or 23; we plan to be in the office for a good part of the weekend) or call us on Monday or Tuesday, October 24 or 25.

We appreciate your cooperativeness in this matter and thank you for your consideration.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

CA:FF:

cc: Jan Brewer, C&RA Anchorage staff
Harvey Pitts, Day Care Coordinator, C&RA Anchorage staff
Commissioner Lee McAnerny, C&RA
Dr. Frank Gold, former Fairbanks Day Care Assistance Program Adminstrator

Ombudsman
Frank Flavin

State of Alaska
360 "K" Street, Room 246
Anchorage, Alaska 99501

(907) 276-4011

Oct. 21, 1977

Dr. Frank Gold
1221 Coppet Street
Fairbanks, Alaska 99701

Ombudsman Inquiry 77-1421
(Findings)

Dear Dr. Gold,

Thank you for your continued patience in awaiting our conclusion regarding Ombudsman Inquiry 77-1421. Enclosed you will find a copy of our review of the file; findings regarding agency action we believe to be faulty; findings where we feel the agency acted properly (areas that you have questioned as possibly inappropriate or in error by the Department of Community and Regional Affairs); recommendations on how the problem areas might be rectified or improved for the future handling of the program; and special findings which detail a matter we found to be appropriate for additional Ombudsman review and comment.

The whited out portion of the opinion deals with day care assistan recipients whose names and files, by state statute, are to be kept confidential. We have informed the department of this omission from your copy. In addition, we have opted to send members of the Borough Assembly copies of the report/opinion, unless we receive reasonable objections from Division Director Eric Lee by Tuesday.

In the meantime, we hope that you will refrain from public dissemination of the report and findings until he has been afforded time to read the entire letter.

To summarize the letter, we investigated your charge that the state had improperly and unfairly prevented you from obtaining a second year subcontract from the Fairbanks North Star Borough, which had apllied for a second year's contract grant for the administration of the Day Care Assistance Program from the department. We have found the allegation and complaint to be partially justified. Although we have found that the state was arbitrary in the enforcement of rules made part of the contract within the applications manual; that its letters which heavily influenced the borough's decision not to renew your contract, were based in part on improper grounds; that the agency acted unfairly with regards to proper procedural notice; and that C & RA was unreasonable in the scope of information collected in regards to you--that all the above did not prevent you from getting the contract.

The above was certainly influential in the borough's decision, but the actual move to obtain new proposals from others (based upon new guidelines recommended by C & RA) as well as the action to not renew or accept your proposal for another subcontract was the action of the Borough Assembly. The fact the assembly chose to accept the state's authority in what involvement the state reserved in the actual choice of a subcontractor makes the decision not to subcontract to you one out of our jurisdiction. However, since it is a matter of

public record that the borough relied heavily upon the C & PA letters from Mr. Lee in June and July to place the entire matter in a holding pattern, it is an appropriate matter that we investigate your charges about the propriety of their statements, procedures and file information In light of our findings, we feel the state, borough and individual agencies proposing to administer the program this fiscal year will be afforded a better background upon which to base future action.

Unless you hear from us by the beginning of the week, you may assume that we will forward identical copies of our letter to Mr. Lee to the assembly as has been requested of us by Assemblyman Phil Younkers (verbally, by phone in early September) and recently, in writing by Mayor John Carlson on Oct. 20, 1977.

Please understand that we are not in a position to determine whether or not you should have or should now receive the subcontract for the Fairbanks North Star Borough's administration of the Day Care Assistance Program this next year. We believe that position is not one that our office can, should or would want to take in light of our own statutory jurisdiction and responsibilities.

Thank you again for your patience in awaiting a determination of your complaint and this subsequent letter complete with our detailed letter to Mr. Lee. Please feel free to respond to this letter and the accompanying report/finding to the department.

Sincerely,

Frank Flavin

Frank Flavin
Ombudsman

cma/FF
cc: Eric Lee, Division Director, C&RA

OCT 21 1977

FAIRBANKS NORTH STAR BOROUGH

Box 1267, Fairbanks, Alaska 99707

October 20, 1977

Cathy Allen
Ombudsman
360 K Street
Room 246
Anchorage, Alaska 99501

RE: Dr. Frank Gold/State of Alaska/Day Care

Dear Ms. Allen:

The Fairbanks North Star Borough Finance Committee requested that I contact you in reference to the afore mentioned subject to ascertain when we could expect a response on the question of Dr. Frank Gold's case.

The Assembly is desirous of contracting out the Day Care program, but have withheld action on this until a response has been received to the questions raised by Dr. Frank Gold.

A response would be appreciated.

Very truly yours,

John A. Carlson

JOHN A. CARLSON
Borough Mayor

JAC:all

File

RoEn Design Associates, Inc.

engineers - land surveyors
565 University Avenue
Fairbanks, Alaska 99701
479-2226

March 19, 1979

Senator Don Bennett
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

Dear Senator Bennett:

Doris Loennig provided me with a copy of the land planning and classification regulations on which there was a public hearing on March 17th. After reading the regulations I found it difficult to argue specifics, but I am generally not in favor of zoning and classification by the department. A.D.L. appears to be using the classifications created last November to classify land parcels so that no subdivision or eventual private use can occur. We have more than our share of wilderness area now - we need to get some of the good State land into private ownership.

As a professional land surveyor, I am more concerned with the regulations heard in Fairbanks, Anchorage and Juneau in January (a copy of which are enclosed). By spreading word of the hearing, the most significant oral contribution in the State was made by Fairbanks residents. This was recognized by Mr. Claud Hoffman in his review of the public hearing comments (in a memo to Commissioner Smith, copy enclosed).

Primarily as a result of the Fairbanks surveyors' comments, the technical aspects of proposed regulations are being cleaned up. It is my understanding that the revised regulations will go directly to the A/G's office for acceptance in early April with no further public review.

The proposed regulations add to the law, new procedures for subdivision, vacation and replatting in the unorganized Borough. Although this is more red tape, the procedures are in the best interests of the public. "Paper Plats" and the associated problems of land ownership will be eliminated by procedures presently practised in organized Boroughs.

However, the State is adopting other guidelines which no one spoke well of. These include:

1. 300 foot greenbelts along highways - measured from the present right-of-way. In some cases along the Alaska Highway, the new regulations would create a 600 foot width of "nothing" between the highway and any subdivided land.

2. A 50 foot public greenbelt (or 100 foot if the river floods) along the bank of waterfront property. This totally precludes the reason for locating cabins along a water front.

An example:

Our firm had a contract with A.D.L. last fall to survey land 2 to 7 miles from Chena Hot Springs, along the Highway, with the initial intent being to create a maximum number of desireable 5 acre O.T.E. sites. Our presentation to A.D.L. was shelved because of inter-agency bickering due to "insufficient planning".

If the proposed regulations go into effect, the greenbelts cited will practically eliminate all desireable tracts in the valley, for the valley is not that wide to start with. A 5 acre piece of isolated muskeg is not near as desireable as one which is accessed by exisiting roads or rivers.

3. Other areas of the proposed regulations concerning easements and rights-of-way are equally ridiculous.

The revised regulations of which I speak of were heard in the 3 major cities which are in organized Boroughs, while the effect of the regulations will be largely felt in the unorganized Borough of the State. The Public will have no further chance to review the contents until they become law.

A greenbelt classification, which automatically preserves land along existing roads and waterways, is a totally ignorant use of that land.

Sincerely yours,

RoEn DESIGN ASSOCIATES, INC.

Tom Rosadiuk, R.L.S.

Enclosures
cc: Representative Charles Parr
Representative Bob Bettisworth

FAIRBANKS SOCIETY OF
PROFESSIONAL LAND SURVEYORS

P. O. Box 2592
Fairbanks, Alaska 99701

January 11, 1979

Mr. Claud M. Hoffman
Chief Cadastral Engineer
State of Alaska
Division of Lands
703 W. Northern Lights Blvd.
Anchorage, Alaska 99503

Re: Proposed Regulations, 11AAC 53

Dear Mr. Hoffman:

A luncheon meeting of FSPLS was held on January 9, 1979 to briefly discuss proposed regulations. Less than half of those present had knowledge of the public hearing to be held at 7:30, on the same day, and had not examined the contents of the draft regulations. Copies were distributed during the meeting.

It was generally felt that inadequate notice and insufficient time was given to the proposed regulations which would have a long and far reaching effect on all future surveys in the State. Since the most affected areas of the State would be the unorganized Borough, especially existing privately owned land, the State should make an effort to advise remote communities of the proposed action, and should receive input from areas other than Juneau, Anchorage and Fairbanks.

While the concept of standardization and centralization of survey and platting requirements is good, and also to provide some much needed definitions especially in the area of navigable water, public water, etc., the proposed regulations will impose an extreme hardship on present and future private land owners in the unorganized Borough. It is also recognized that access to many remote lands is inadequate under the present structure, but easement provisions proposed are far too excessive.

Time does not permit committee response to the regulations by item, and therefore individuals were requested to submit written comments to the Secretary for submission to the Division of Lands. Enclosed are comments by Paul Stutzmann and Tom Rosadiuk.

Sincerely yours,

FAIRBANKS SOCIETY OF PROFESSIONAL
LAND SURVEYORS

Tom Rosadiuk, Secretary

TR/bm

RoEn Design Associates, Inc.

engineers - land surveyors

3505 Airport Way
Fairbanks, Alaska 99701
479-2226

January 10, 1979
Comments on Proposed Regulations, Draft Copy dated December 12, 1978

These are comments by Tom Rosadiuk, R.L.S.

Article II

Page 3 11 AAC53.100 The survey and platting standards are to apply to all State Land but which regulation predicate within the bounds of a platting authority. I would like to see this more clearly spelled out. If the regulations of the present Boroughs in the State are adequate, then say that the Borough Ordinances will control. If there is some fear that Borough standards are not as stringent as those proposed, say that the more stringent standards shall apply, by item.

Page 8 11 AAC 53.150.b Why the change from the conventional "government lot" to "tract" designation. Prefer to see the former, most accustomed term used rather than to introduce a new one.

Page 11 11 AAC 53.170 Surveying of a section perimeter and the center quarter in order to get one 40 acre homestead entry within that section is too excessive a survey requirement. Many of these surveys would cost more than $1500 per mile, which is quite an imposition on an Homestead Entryman map.

Paragraph 2 attempts to cover access "to navigable and public water" from each parcel of land. There are not only easements along each tract boundary, there are also easements along public water. This section may have been intended to insure that items did not get land locked; perhaps we should address that concern. Par. 2 is addressed to navigable and public water of which there may be none in many sections.

I do not have a copy of AS38.05.440 which pertains to the time allowed for surveying. I am concerned that the regulation may be tied to the end of a calendar year as it has been with O.T.E.'s. The person applying for an extention to the survey period will undoubtedly be the surveyor, and as par. 3 is written,

only an act of God would be sufficient reason for an extension. This puts too much on a burden on the surveyor. I would like to see at least 18 months (a period of two seasons) or two years be available to perform these remote surveys.

Page 12 11 AAC 53.190 Item I should have an allowance for triangular tracts which are sometimes encountered in which the fourth monument is redundant. The same item should make an allowance for ferrous metal pipes. The requirement for exterior primary monumentation in par. 5 is too stringent. There are many instances where an exterior boundary would require primary monumentation on 200 foot intervals due to curvature. I believe this item could be dropped entirely.

Page 13 11 AAC 53.200 Under par. 1, bearing tree tags apparently shall be marked with distance to the monument. Although this may be convenient at some time in the future, it's also adding a requirement which has not been impose either by the State or by B.L.M. Let's continue looking in the notes to find these distances. In Item B, the need for a six foot long minimum 2x4 post set two feet in the ground is adding a great deal of work to the monumentation. In the case of frozen ground it means doubling the cost by doubling the time requirement at each corner. Perhaps this could be simplified.

Page 15 11 AAC 53.210 Item 12, The need to round bearings to the nearest 15 seconds in Item 12 appears to be a little bit outdated. With state of art equipment, the 1 in 2000 survey requirement is far exceeded. I would be inclined to raise the survey standards to 1 in 5000 as the minimum requirement, and I would furthermore delete the rounding of bearings.

Page 20 11 AAC 53.240 Paragraph A appears to retain a provision to allow adjacent land owners to appeal to a completed survey. Lack of an appeal indicates plat acceptance. What happens if an appeal is made? I don't understand the reason for a written technical appeal by adjacent land owners.

11 AAC 53.300 How does an easement become a right-of-way after survey and dedication? Under easements, a 20 foot utility easement is seldom wide enough to permit construction within it's bounds. A 30 foot easement is recommended. Pedestrian easements of 20 foot width appear to be excessive and could be reduced to 10 feet. Residentials road right-of-ways of 60 feet in width are excessive and could be reduced to 40 or 50 feet in width. An allowance should be made to increase right-of-way width where traverse slope dictates a wider right-of-way.

Page 22 11 AAC 53.310 It appears that the State will determine which waters are navigable and public waters. Approximately one year ago, a study was authorized by some Federal Agency, I believe the study is being performed by some branch of the University of Alaska, to compile a historical record of water used for navigation, and to possibly set some standards or definitions for the determination of navigable water. It would be advantageous to have similar definitions.

Page 23 11 AAC 53.330 Under a, Where access along the easement is difficult, the alternate up-land access route should perhaps contain a maximum width rather than be a random alternate route. Under Item b, along in-land waters, the need for a 50 foot shore line easement appears to be excessive. The proposed easement contradicts to the initial privacy that one would expect when he obtains ownership to a tract along such water. Leave the continuous easement at 25 feet in width.

Page 28 Article 4 General, This article appears to be so all inclusive that a separation would be helpful indicating the requirements on private land versus the requirements for State Land. It appears that the proposed subdivision development standard would apply to all land not within the boundaries of an established platting authority.

11 AAC53.410 The minimum 40 acre aliquot part subdivision is far too large as a minimum requirement. The minimum should be 2.5 acres or 5 acres.

Page 28 11 AAC 53.420 Having observed the time requirements to process replats in our Fairbanks North Star Borough, both on the part of the surveyor and the platting authority, I would prefer a simplification of the replat process. These standards will affect primarily those areas in the unorganized Borough, such as townsites in various remote communities. Since many of these townsites prently have small lots and have for sometime use the metes and bounds description to alter lot boundaries for financial or for whatever reasons, the new replat procedure will mostly affect such remote communities.

Perhaps the extent of change to an existing boundary can dictate the requirement for a public hearing process. If a lot boundary is changed, for instance, two lots are combined into one, or the easterly 15 feet of this lot is sold to accomodate a building on the adjacent lot, or where the vacation of an easement or road right-of-way is not involved, there seems little need for a public hearing. I am in agreement that a new plat should be filed, but perhaps an order could be filed in the appropriate recording district to make allowance for recordation of a plat and to eliminate the public hearing process.

Normally, the need for replats in most cases is caused by financial institutions at the time that a loan is requested for new construction. With the time requirements set forth by the public hearing process, the recording process, appeals and other factors, one could easily use up an entire construction season simply getting a replat performed. A great deal of simplification is suggested to this process.

Page 30 II AAC 53.430 While recognizing the need for legal surface access to the subdivision, the ability of the director at his discretion to require construction of roads, airfields and water way facilities, is wrong.

We have recently been involved in the Borough Ordinances for road construction within subdivisions and note a number of problems in paragraph 1 and 2. For access roads, make

allowance for use of material other than gravel, or the definition of gravel should be so inclusive as to permit the use of tailings, certain types of bedrock, etc. perhaps with a fracture limitation. The overlay of 3 feet of gravel should be a maximum requirement, not a minimum requirement. In Item 2, 18 feet wide roads inside most subdivision are inadequate, because they do not permit two lanes of traffic to operate under all weather conditions. The width should be at least 20 feet from shoulder to shoulder. Again the definition of gravel should permit the use of local materials and in an overlay situation 2 feet of gravel should be a maximum requirement.

Page 32 11 AAC 53.470 The requirements for greenbelts and reserved areas are totally unacceptable. While these proposed regulations would not affect land within the bounds of existing platting authorities, except for possibly State Land, the requirement along existing highways will be totally negative to the area growth. Many communities within the unorganized Borough have lots through which a highway has passed and the imposition of a greenbelt would make a large number of these lots totally unuseable. In many cases, along existing primary routes, development is strip development.

The need for waterfront greenbelts is also questioned. Let the public access the street or the water at certain points, but do not let the public access land which should be, or is, in private ownership.

STUTZMANN ENGINEERING ASSOC., INC.
P. O. BOX 1429
FAIRBANKS, ALASKA 99707
907 452-4094

January 9, 1979

Comments on ADL Draft Regulations

By: Paul E. Stutzmann, R.L.S.

Page 4 (4) Class IV Surveys 1:2000 Why not have a better standard in this day and age. Say 1:5000. Upon further work in section, surveyor must refine accuracy before proceeding.

Page 6 (4) Celestial observations for position? No good at all. Better to use map position.

" AAC 53.130 Types of surveys. Add "State Surveys"?

" AAC 53.150 Why not Class III standards 1:5000?

Page 8 (1) 3rd line the "East" section corners

Page 11 11 AAC 53.170 "Homestead Entry Surveys" forces entryman on 40 acres or so to survey and monument entire section. Totally wrong. Use paper location until time and conditions warrant official supplemental cadastral survey, then exact position can be set. Meantime, entryman can locate himself as best he can, approximate stadia survey, etc. or whatever a surveyor can do for him. Corners set by private surveyor prior to cadastral survey must yield to official survey location.

Page 11 (2) 50' easement on all sides of a small parcel is very excessive. Some easements are needed, of course. These easements, once created, are extremely troublesome to eliminate later when they are not needed and interfere with other development.

Page 12 (1) Why "non ferrous" pipe. What's wrong with iron pipe?

(5) This requires continuous intervisibility between monuments; not needed or done anywher else. (Throw this out entirely.)

Add. Monument caps should be marked with surveyor's registration number.

Page 14 (6) Extra sheet for index is a waste of time and storage space. Usually this info can be incorporated onto vicinity map and shown on each sheet.

Page 28 Article 4 in general speaks of "State" subdivisions and "private lands" "replats"

The definition of "replat" can be construed to mean any subdivision of whatever size according to definition on Page 36. Any parcel under 40 acres aliquot part requires plat. All plats require departmental approval. It presently takes about 3 to 6 months to get any action through ADL, such as a section line vacation. Does the State really want to tie up all surveying and land transactions between its citizens to this extent? If not, just what are intentions and extent of applicability of various parts of these regulations?

Basically, I think two separate sections would be better. One section to deal with "subdivision of State owned land" and another to deal with whatever platting authority action it really intends to exercise on privately owned lands.

Page 29 (2) Petitioner doesn't have this information available. Only ADL's own land records have this. They should dig it out for themselves -- IF it's really needed at all.

Page 32 11 AAC 53.470 "Greenbelts." Good God! What gives the State the right to confiscate 150 feet of private lands adjacent to all "primary and secondary highways" in the State? Why do we need them anyway? We already have about 100 million acres of parklands. Let's let the private citizen use the little bit of land he has for his own. As far as State subdivision is concerned, they have lots of land. If they want to give their 300 feet and build extra roadway to get past the greenbelt to land that can be used, I have no objection other than as a taxpayer whose tax money is being wasted.

As a matter of example, on a highway like the Parks Highway, which already has a 300 foot right-of-way (excessively wide), setting out a 300 foot "greenbelt" on each side, should the State develope land along each side, makes a total of 900 foot width of excluded land for that highway.

Another example!

Any State highway, primary or secondary, passing through any narrow valley, with its greenbelts, uses up the entire valley floor and leaves no space at all for anything.

Page 33 (b) After all the dedications for "greenbelts", "easements", "accesses to water", etc. how much more of a developers land will the "Director require" to be set into "open space", "parks", "trails", or "recreation areas"? Also, what does this apply to, State land subdivision or subdivision of private lands?

Page 33 (c) (2) Same objection as above. Excessive reservation and confiscation of land if it applies to privately owned property.

Page 36 (29) Replat -- A very nebulous definition. As used throughout the text of these regulations, it seems to include all subdivision plats for subdivisions or even any small survey which creates any parcel smaller than a 40 acre, aliquot part. Just what is a "replat" anyway, and where does the term come from. Blacks Law Dictionary doesn't list it nor does Websters Dictionary, Second College Addition, Copyright 1976. It seems to be a term used to confuse people into thinking these regulations pertain to something other than ordinary subdivsiion of land which is, in fact, exactly what is being regulated here.

Page 37 (38) Tract -- This definition seems to be identical with BLM's use of "lot" designation. Why not be consistant with them. Also, in general usage this term has a much broader definition.

I have compiled the above list of comments in a single afternoon. I am sure that if I had more time I could spend on this, I could have written much more. I suggest that the amount of regulation concerned with in this draft is much too large an undertaking to be proposed at one time, and the impact of the regulations as proposed is much too large to be handled on an administrative regulation basis. In fact, some sections, such as the applica-

tion of 11 AAC 53.470 to privately owned land are probably unconstitutional. I do not want to see these regulations passed in anything like the present form.

Paul E. Stutzmann

Paul E. Stutzmann, P.E. and R.L.S.

STATE of ALASKA

MEMORANDUM

DEPARTMENT OF NATURAL RESOURCES, DIVISION OF LANDS

TO: Michael C. T. Smith
Asst. Commissioner

DATE: January 19, 1979

FILE NO: 1020

TELEPHONE NO.

SUBJECT: Survey, Platting, Land Records & Municipal Land Regulations

FROM: Claud M. Hoffman
Chief Cadastral Engineer

Attached hereto is information and material indexed for 'manner of ease' to assist the reader to review the material and contents for the referenced subject.

Overview of Advertisement and Policy.

A dozen major papers of general circulation crisscrossing Alaska was notified and requested to publish the information on hearings of the subject regulations. This cost is averaging $80 to $120 per newspaper. We have already received and recommended payment for three, and feel confident that they were actually published in all the papers as requested.

In addition to the news media publication, all Departmental Commissioners, Lieutenant Governor's Office and numerous other people received ADL mail out copies of the regulations and publication. In addition thereto, 130 copies were sent to surveyors that have been involved in Division of Lands survey activities, crisscrossing Alaska. Further, numerous phone calls, individual contacts and division mail out did exist.

Overview of Public Hearings.

The public hearing in Fairbanks was well attended and 17 people presented oral testimony. The majority of the testimony was in opposition to the regulations in general. The basic concept was taking away someone's rights that they now have and that adequate publicity was not given the regulations. The public hearings in Anchorage and Juneau were not well attended. Written testimony was also received at the Anchorage and Fairbanks hearings.

The following 15 items appear to overshadow and be the general trend for the nonacceptability of the regulations by the public and especially the Fairbanks congeries.

1. Inadequate notice. The regulations are not changes as advertised but new regulations and were not adequately advertised and no hearings were held in bush areas where they most apply. Timing of public review was during holidays and therefore, did not allow proper review.

2. The intent of the regulations is to nullify the "Bierne Initiative", being too excessive, restrictive and costly. (Should remove 11 AAC 53.170 from regulations due to Moody's order.)

3. Land status records should be kept in District Offices. The District Land Office should be kept open a minimum of 6 hours daily and hopefully, 7½ hours. Land Status updates are not displayed in a timely manner. Records should have specific time for updates and additions such as, 24 hours, 48 hours, 72 hours, 3 days, etc. for creditability. Changes invalid until shown on status documents and case files and status documents should only be considered as valid when shown in the A.D.L., District Offices.

4. Local government subdivision ordinances should control within their areas, but not in adjacent areas.

5. Class III Surveys are too stringent for homesteads and homesites. Registered Land Surveyors licenses are adequate to control the regulating of the type of survey. Costs are too high for surveys due to the A.D.L. regulations. (Regulations are too restrictive, therefore, too costly. 1:2000 is too great -- 1:2000 is too low. (Mixed comments.)

6. Disagree with conveyance of a minimum of 40 acres aliquot part, without a plat. (Should be 2½ acres by aliquot part or less and should allow any aliquot part description by fragments to total a 40 acre parcel, such as, S½S½NW¼ or NE¼NE¼NW¼ and NW¼NW¼NE¼.

7. ROW width for roads, pedestrian easements and waterway easements are excessive and utility easements too narrow. Objection to the use of the word 'approximately' in describing ROW and other minimums. Object to parcels being construed reference AS 38.05.480 and easements under 11 AAC 53.170. Road ROW's are already too excessive and then to add another 150' to 300' is completely out of line on state land and on private land completely unacceptable. Who will pay the taxes on green strip reserves on private land?

8. A one year extension to complete surveys (Bierne Initiative) too short; should be 18 months or 2 years and more than one extension should be allowed.

9. Four survey monuments are not needed. The setting of section and center section corner monuments for a 40 acre aliquot part for the Bierne Bill is excessive. Monuments every 1320', references and bearing tree requirements excessive.

Why iron pipes? Monumenting angle point on meander lines excessive. Much too expensive to survey a single 40 acre parcel out of an unsurveyed section. Why even survey? Use a paper plat and description.

10. Plat format requirements excessive, i.e., do not need standard title blocks, index sheets, map scale control and all surveyor's statements and miscellaneous certificates on plats. If required, state should provide base sheets and, why not convert to metric now?

11. Too much control by the director. Regulations are bureaucratic and socialistic, trespass on democracy, travesty on people's rights and are totally contrary to people's wishes.

12. Disagreement with 500' notification requirement for land ownership in the replatting and easement vacationing process and acquiring names of adjoining property owners in petition to vacate and replat. Opposite testimony being not enough people notified!

13. Road construction standards too stringent. Different circumstances require different standards. Desire to establish who will maintain road, sewer and water facilities after construction by the state, and who builds?

14. Disagreement with tract designation on west tier of sections within a township.

15. Confusion as to requirements and statutory authority of the state under AS 40.15.075, Article 4, with particular reference to the following on private land.

a. When and the amount of easements and ROW's that are to be dedicated.

b. When and amount of greenbelts, parks and open spaces that are to be dedicated.

c. The general subdivision of land by private parties; when a replat or vacation is not applicable. (Inside a 40 acre grant.)

d. The general feeling the state is exceeding it's authority of 'a', 'b' and 'c', on private lands. Too much greenstrips and R.O.W's.

Summary and Recommendations.

In summary, I feel some of the better data of survey technical substance came about from the direct contact approach to the surveyors. There was [illegible] state that I am aware of

that presented oral testimony, per se, at the public hearings, but the input from the surveyors is most enlightening.

I feel that adequate and legal advertisement did exist and that emotions were running high in Fairbanks, due to our regulations being immediately after such other 'hot' issues as the "D2" and "Antiquities Act". Further, I feel if we were to go back and readvertise after we 'clean up some technical recommendations' dealing with survey and platting, we would still be confronted with the same problems with the general trend of controlling private land development with our regulations.

The real problem appears to be the public's feeling that the state is going to be exercising more authority than we should in areas where the state does not own the land. (Lands that are now in private ownership.) Individual desires to subdivide and sell their lands without all the restrictions we are trying to apply.

I herewith recommend that we clean up our technical survey language in our regulations and take a serious look at the authority we actually have in our replatting process for creating greenstrips and additional rights-of-way on private lands that individuals desire to subdivide and proceed on line and adopt the regulations, excluding therefrom the survey portion directly associated within the one page that deals solely with the Bierne Bill Initiative.

We should incorporate language in our regulations whereby we will be able to handle a comparable homestead survey program with regulation control.

At this time, I am proceeding ahead in cleaning up technicalities which I feel necessary in the surveying, records and platting portion of the regulations. I will have a corrected/amended version, hopefully, within the next couple of weeks that will have my recommended changes incorporated therein.

All in all, good response and good comments.

cc: Theodore G. Smith, Director
Division Forest, Land & Water
Mary Kaye Hession
Regulations Specialist
ADL, District Managers
DNR Planning Section

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

JAY S. HAMMOND, GOVERNOR

DIVISION OF LANDS 323 E. 4TH AVENUE – ANCHORAGE 99501

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE DEPARTMENT OF NATURAL RESOURCES

Notice is hereby given that the Department of Natural Resources, under authority vested by AS 29.18.212, AS 38.04.900, and AS 38.05.020, proposes to adopt regulations in Title 11 of the Alaska Administrative Code to implement AS 29.18.201-29.18.212, AS 38.04.045-38.04.055, and AS 40.15.075, as follows:

(1) 11 AAC 57 is adopted to set out the procedures for land selections by municipalities entitled to state land under AS 29.18.201-29.18.213. 11 AAC 57.020 explains how the entitlement is computed. 11 AAC 57.030 covers the nomination by the municipality of a selection pool larger than its entitlement, from which it may later make its selections; explains which categories of land the municipality may nominate; and restricts the circumstances under which the Division of Lands may remove land from the pool without the municipality's consent. 11 AAC 57.040 spells out the joint state-municipal planning process that must take place before a selection is made. 11 AAC 57.050 deals with the selection process, sets time limits for selection, and provides for public notice at the municipality's expense if the Division of Lands tentatively approves the selection. 11 AAC 57.060 sets out survey requirements for an approved selection.

(2) 11 AAC 53 is adopted to regulate land records, surveying and platting. Article 1 covers the Division of Lands' records system and specifies the hours during which land status documents are available to the public for inspection and copying.

Article 2 specifies procedures to be used in surveying, monumenting and platting state land, including procedures for open-to-entry surveys and homestead entry surveys. The forms that must be shown on a plat are listed. An appeal process is set up to resolve disputes over surveyed boundaries.

Article 3 covers easements and rights-of-way that must be reserved, including public access easements, utility easements, pedestrian easements, and road rights-of-way. The requirements for easements to and along navigable and public water are amended from regulations already in effect as 11 AAC 70.

Article 4 formulates subdivision development standards that apply to state land subdivided by the Division of Lands and to replats or vacations of private land in third class boroughs and the unorganized borough, where a quarter-quarter section or its equivalent is the smallest aliquot part subdivision that may be created without a plat. The procedure for obtaining the Division's approval of a replat or vacation is amended from regulations already in effect as 11 AAC 68. Standards for road construction and rights-of-way, sewer systems, water systems, utility easements, greenbelts along primary and secondary roads, recreation areas within residential subdivision, and easements or greenbelts to provide access to public waters are set forth.

Article 5 defines terms used in the chapter.

(3) 11 AAC 62.260-11 AAC 62.300, 11 AAC 62.640, 11 AAC 64.500-11 AAC 64.560, 11 AAC 68, and 11 AAC 70 are repealed.

(4) 11 AAC 99 is adopted to define terms used repeatedly in 11 AAC 55-11 AAC 99.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at a hearing to be held in the Multipurpose Room, Romig Jr. High School, 3600 Minnesota Drive, Anchorage, at 7:30 p.m., January 8, 1979; in the Multipurpose Room, Ryan Jr. High School, 951 Airport Road, Fairbanks, at 7:30 p.m., January 9, 1979; and in a room to be announced, Marie Drake Jr. High School, 1208 Glacier Ave., Juneau, at 7:30 p.m., January 11, 1979.

Copies of the proposed regulations may be obtained by writing to the Department of Natural Resources, Division of Lands, Regulations Coordinator, 323 E. 4th Avenue, Anchorage, Alaska 99501.

The Department of Natural Resources, upon its own motion or at the instance of any interested person, may after the hearing adopt the proposals substantially as described above without further notice or may decide to take no action on them.

DATE 12/12/78

Al Carlson for
Michael C. T. Smith
Assistant Commissioner

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES

JAY S. HAMMOND, GOVERNOR

DIVISION OF LANDS 323 E. 4TH AVENUE – ANCHORAGE 99501

December 12, 1978

Dear Alaskan:

Attached are three chapters of proposed regulations on which the Division of Lands will hold public hearings in early January in Anchorage, Juneau, and Fairbanks. (See the "Notice of Proposed Changes in the Regulations of the Department of Natural Resources" for hearing details.) The Division of Lands is interested in your suggestions concerning these proposed regulations. You are invited to present a statement, oral or written, at one of the hearings, or to send it directly to the Division of Lands. If your statement is mailed, please send it no later than Jan. 12, 1979.

The first chapter of regulations is 11 AAC 53, "Records, Surveys, and Platting." In June the Legislature passed a new law, ch. 181, SLA 1978, that among other matters requires surveying before the State disposes of land, and obliges the Division of Lands to reserve access easements necessary to reach public land or water in the area, along with access and utility easements needed to serve each parcel. (These provisions will appear in the Alaska Statutes as AS 38.04.045-38.04.055.) The new chapter of regulations puts these legal requirements into effect.

Article 1 of 11 AAC 53 covers the division's land records system, emphasizes that land status plats are not official documents for title purposes, and sets the hours that land records are available for inspection and copying in the district offices of the division (3327 Fairbanks St., Anchorage; 4420 Airport Way, Fairbanks; and 11th Floor State Office Building, Juneau).

Article 2 deals with all types of surveys, including surveys for open-to-entry sites and homestead entry parcels, sets the limits of error for each type, and prescribes procedures for surveying, monumentation and platting. (Other matters necessary for the implementation of the homestead entry initiative will be covered in proposed regulations for which hearings will be scheduled soon.) Much of this material is adapted from regulations already in effect in 11 AAC 62 and 64 on tidelands and set-net site leasing. Most of the other procedures have been required by the Division of Lands for many years, but in the past have been stipulated as part of each set of survey instructions issued before a survey is begun. However, the volume of land disposal actions is now so high that it is necessary to standardize procedures as much as possible in the form of regulations and cut to a minimum what must be detailed in individual survey instructions.

Article 3 sets the standards for the road, utility, and public access easements and rights-of-way that must be reserved, surveyed and platted before the division can dispose of land. The bulk of this article is amended from regulations

already in effect as 11 AAC 70 that set the widths of easements for access to and along public and navigable waters, as required by AS 38.05.127. The Division of Lands is proposing to raise the minimum width of such easements from 25 to 50 feet.

Article 4 sets the development standards for the division's own subdivisions and, in third class boroughs and the unorganized borough, for subdivisions of private land that are subject to the division's authority to approve replats.

Several sections in 11 AAC 62 and 11 AAC 64, and the whole of 11 AAC 68 and 11 AAC 70, are repealed, since they are being incorporated into 11 AAC 53.

Another chapter proposed to be adopted is 11 AAC 57, "Municipal Land Selections." Legislation allowing boroughs to select a percentage of state land within their boundaries was originally passed in 1964, and later was amended to include cities as well. However, the law left many implementation questions unanswered. During the past session, the Legislature amended the law to a substantial degree (see ch. 180, SLA 1978), clarifying how the selection process was to occur. The new law requires that joint planning take place between each municipality and the Division of Lands to determine which potential selections can best serve the municipality, while still protecting the state interest as a whole. This law is linked to ch. 181, SLA 1978, by a provision in the latter requiring the Division of Lands to mark 25 percent of former mental health trust lands for disposal, and allowing a municipality to select such designated lands to meet its entitlement under ch. 180, SLA 1978, if it certifies that it will undertake disposal programs to "meet the needs of persons residing in the municipality."

(Regulations formerly in AAC 53 and 57 concerning zoning and agricultural land sales have been renumbered without amendment as 11 AAC 91 and 67 respectively.)

The third set of proposed regulatic , 11 AAC 99, incorporates definitions that in the past have been repeated in e ch chapter of the Division of Lands' regulations.

Your testimony on these three chapters of proposed regulations will be mos useful to us if it makes reference to particular sections by number (for insta 11 AAC 53.420(b)(4) rather than a page number) and if it offers specifi ding changes or other modifications you feel would result in improvement. If y would like a copy of the new laws on which these regulations are based, contact the Legislative Information Office in Anchorage (278-3668), Fairbanks (452-4449), Juneau (465-3800), or Ketchikan (225-9675).

Sincerely yours,

Al Carson

for Michael C. T. Smith
Director

CHAPTER 53. RECORDS, SURVEYS, AND PLATTING.

Article
1. Land Records System (11 AAC 53.010 - 11 AAC 53.050)
2. Surveys and Platting (11 AAC 53.100 - 11 AAC 53.270)
3. Easements and Rights-of-Way (11 AAC 53.300 - 11 AAC 53.370)
4. Subdivision Development Standards (11 AAC 53.400 - 11 AAC 53.470)
5. General Provisions (11 AAC 53.500)

ARTICLE 1. LAND RECORDS SYSTEM.

Section
010. Purpose
020. Land records
030. Record entries
040. Availability
050. Confidentiality

11 AAC 53.010. PURPOSE. The purpose of secs. 10-50 of this chapter is to set forth the procedures of the land records system, which is responsible for recording and filing all actions affecting the status of state land.

Authority: AS 09.25.120
AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 40.21.070

11 AAC 53.020. LAND RECORDS. Land records trace the history of all land status from acquisition to disposal and consist of the following:

(1) land status plats, which graphically portray all actions affecting state land and land in other ownership as required. These plats are for illustrative purposes only; the actual written documents remain the official record. There are two types of land status plats:

(A) land estate plats, which portray land actions and transactions on the surface of each township; and

(B) mineral estate plats, which portray subsurface actions and transactions within a given township. These plats may also show state tideland data;

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(2) the historical index, which is a narrative summary of and an index to state land actions and transactions that affect the title to, disposition of, or use status of state land or state tentatively approved land within an individual township; and

(3) the serial register, which is a numerical index of land actions assigned division of lands serial numbers.

Authority: AS 09.25.110
AS 09.25.120
AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 40.21.070

11 AAC 53.030. RECORD ENTRIES. (a) When an instrument is filed for incorporation into the land records system, it will be noted in the proper serial register, or in a new serial register, and will be made available for public inspection at the beginning of the next regular day of business after it has been noted.

(b) Action requiring a change on the land status plat and historical index will be noted in a timely manner.

Authority: AS 09.25.120
AS 38.05.020
AS 38.04.045
AS 38.04.900
AS 38.05.035
AS 40.21.070

11 AAC 53.040. AVAILABILITY. (a) Except as provided in sec. 50 of this chapter, any document produced and maintained in the division's land records system is available to the public for inspection and and copying from 9:30 A.M. to 3:00 P.M. during regular business days in accordance with AS 09.25.110.

(b) On request, the division will supply a certified true copy of any available document maintained in its land records system. A fee is charged for all copies in accordance with a fee schedule posted at each of the district offices of the division.

Authority: AS 09.25.110
AS 09.25.120
AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035

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11 AAC 53.050. CONFIDENTIALITY. Documents requested to be kept confidential under AS 38.05.035(a)(9) or required to be kept confidential under AS 09.25.120 are not available for inspection or copying.

Authority: AS 09.25.120
AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035

ARTICLE 2. SURVEY AND PLATTING STANDARDS.

Section
100. Application
110. General survey standards
120. Technical survey standards
130. Types of surveys
140. Rectangular surveys
150. Supplemental cadastral rectangular surveys
160. Metes and bounds surveys
170. Homestead entry surveys
180. Deposit for survey costs
190. Monuments
200. Monument accessories
210. General plat standards
220. Preliminary plat standards
230. Final plat standards
240. Technical appeals

11 AAC 53.100. APPLICATION. Secs. 100-240 of this chapter apply to all state land, except that if the land is within the jurisdiction of a platting authority, and if the ordinances of that platting authority governing subdivisions are at least as stringent as the standards of this chapter, and if the platting authority possesses sufficient resources and enforcement capability to insure uniform compliance with its regulations, then that authority's ordinances govern instead of this chapter.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.045

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11 AAC 53.110. GENERAL SURVEY STANDARDS (MINIMUM). All survey work must be accomplished with commonly accepted equipment and procedures to insure at least the degree of accuracy prescribed in this section for the class of survey required.

(1) Class I surveys. This class of survey is for control surveys where accuracy greater than 1:10,000 is required. It is required by the division for, but is not limited to:

(A) extension of the geodetic control from existing networks into areas where cadastral surveys are to be established in accordance with the official protraction diagrams; and

(B) establishing control survey networks to National Geodetic Survey accuracy.

(2) Class II surveys. This class of survey is for urban areas where a municipal platting authority requires survey accuracy greater than 1:5,000, but less than that for class I surveys.

(3) Class III surveys. This class of survey is for rural areas where survey accuracy of 1:5,000 is required. It is required by the division for, but is not limited to, such surveys as:

(A) subdivision surveys;

(B) open-to-entry surveys;

(C) shore fishery development surveys;

(D) tideland surveys; and

(E) metes and bounds surveys.

(4) Class IV surveys. This class of survey is for remote areas when a survey accuracy of 1:2,000 is required. It is required by the division for, but is not limited to, such surveys as cadastral rectangular surveys.

(5) Class V surveys. This class of survey is for general location surveys where accuracy of less than 1:2,000 is required. This class of survey is required by the division for, but is not limited to, such surveys as:

(A) cabin site locations; and

(B) mineral claim locations.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035

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11 AAC 53.120. TECHNICAL SURVEY STANDARDS. The technical standards in this section control specific survey procedures.

(1) Mean high tide:

(A) in the case of unoccupied and unimproved tide and submerged lands not seaward of an incorporated municipality, the line of mean high tide must be determined in accordance with (B)-(D) of this subsection and used as the landward boundary. In the case of occupied and improved tide and submerged lands, either the original meander line established prior to statehood or the line of mean high tide, whichever is the higher, must be reestablished or determined and used as the landward boundary line;

(B) for tideland surveys abutting any U.S. survey made after the date of statehood or in any location where no upland survey exists, the line of mean high tide must be determined by using National Geodetic Survey bench marks (or any other bench marks that have been established from that source), and the tide table datum. The upland boundary need not follow this line in its entire exactness, but may follow in a "meander" or "average" line of mean high tide. Each end of the boundary must be established on the elevation of mean high tide;

(C) in case no National Geodetic Survey bench mark exists within one mile of the property being surveyed, the surveyor may, by using the tide tables for the immediate body of water and applying tidal readings he has taken, determine the line of mean high tide; and

(D) in some cases, such as salt or mud flat areas where the average grade of the beach is 10% or less, and where determining the elevation of the line of mean high tide could create a lengthy horizontal distance, the director may nevertheless require that the true line of mean high tide be established using the procedures of (B) of this subsection, regardless of the distance from a known bench mark.

(2) Ordinary high water mark. This is to be determined by observing and marking the place on the bank or shore up to which the presence and action of water are so prolonged as to impress on bank or shore a character distinct from that of the bank or shore with respect to vegetation and the nature of the soil.

(3) Vertical control. Vertical control must be established by utilizing National Geodetic Survey bench marks or tidal readings, in accordance with survey instructions issued by the division.

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(4) Horizontal control. The latitude and longitude positions, as established by the National Geodetic Survey, must be used to coordinate the survey to all other surveys in the area and to the rectangular cadastral survey in accordance with the class of accuracy assigned under sec. 110 of this chapter to the type of survey. If no such official recognized horizontal control exists within two miles of a survey, the latitude and longitude may be derived from a set (or sets) of celestial observations. These observations must be done as set forth in the manual of survey instructions prepared by the United States Department of the Interior, Bureau of Land Management, which is current at the time of survey. If this is done, a true copy of the field notes and calculations of the observations must be submitted to the division of lands, together with the plat of survey.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 53.130. TYPES OF SURVEYS. There are four general types of surveys: rectangular surveys, supplemental cadastral rectangular surveys, metes and bounds surveys, and homestead entry surveys.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.045

11 AAC 53.140. RECTANGULAR SURVEYS. Rectangular surveys, including homesite surveys and public and private recreation site surveys, must adhere to class III survey standards, unless the division authorizes the use of class IV standards, and must follow the survey and platting requirements of this chapter. Any survey or platting criteria unique to a particular type of survey will be set forth in special survey instructions issued by the division.

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Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.045

11 AAC 53.150. SUPPLEMENTAL CADASTRAL RECTANGULAR SURVEYS. (a) Supplemental cadastral rectangular surveys are divided into four categories, each of which is surveyed to class IV standards.

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(1) Category I applies when no rectangular cadastral survey corners have been set to define the rectangular survey township perimeter. The township is, therefore, legally described only by reference to the official protraction diagrams. The section corner positions along the perimeter and within the interior of the township must be established at the official protracted geodetic positions as shown on the official protraction diagram.

(2) Category II applies when monumentation exists on the perimeter of a township that is officially platted. All subsequent section, one-quarter section, and other corner positions must be located along the perimeter on line and at prorated distances between the monumentation of record. All interior section corner positions must be established at the official geodetic positions as shown on the official protraction diagrams. The interior section lines along the exterior one mile of the township must then be established as a line connecting the established geodetic positions of the interior section corners and the section corner positions as established on the exterior of the township. Whenever interior correction lines have to be established, because the configuration of the township exterior is not established at the official protraction positions, then special instructions from the division are necessary for the official positioning of the correction line and corner monument positions.

1:2000

3) Category III applies when the perimeter of the township has been established and monumented, based on the official protraction diagrams, and interior monumentation defining a particular section of land also exists, based on the official protraction diagrams. When this situation exists, a section of land may be located within the interior portion of the township by continuation of the rectangular survey system in accordance with the approved protraction diagrams, using either the monumented interior section corners or the exterior perimeter section corner monuments, whichever is more appropriate. The rectangular system is then projected to within one mile of the other prior established section corner monument. Then the line connecting the existing corner and the newly established section corners is made and the one-quarter corner is set at midpoint and on line. However, if the connecting line does not close within the survey class accuracy assigned, a correction line is required and survey instructions must be issued by the division to govern the location of the correction line.

(4) Category IV applies when the perimeter boundary of a township has been established and monumented, based on either an official protraction diagram or on an older perimeter boundary survey done before the official protraction diagrams were approved. It also applies when the interior section corners have been established and monumented, based on either an official protraction diagram or an older

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survey done before the official protraction diagrams were approved. There are two survey datums to contend with, one that controls the exterior boundary of the township and one that controls the interior section corners. Both may be physically monumented on the ground. When two such datums exist, the director shall issue special survey instructions establishing a correction line to control the basis for projection of the rectangular survey system throughout the township. These special instructions will govern the interior subdivision of the township.

(b) The following survey and platting standards apply to supplemental cadastral rectangular surveys.

(1) For the west tier of sections in a township, the north-south center section line must be established at 2,640 feet west of the section corners, and the remaining distance to the west section corners must be as established by field measurements. The east half of the section is platted as aliquot parts, with the west portion being divided into two tracts. These tracts will be designated as Tract A and Tract B, with Tract A being to the north. However, when smaller units than the two tracts A and B, mentioned above, are to be surveyed and platted, then the one-sixteenth section corner positions must be set at 1,320 feet west of the one-quarter section corner position. The east half of the west half is platted as aliquot parts, with the westerly remainder of the section then divided into four tracts, using the same alphabetical designation mentioned above, with Tract A being to the north and Tract D to the south. Thus, the one-quarter corner must be at 2,640 feet from the east corner, and the one-sixteenth corner must be at 1,320 feet from the one-quarter corner. The only exception is if there is a platted distance call on an exterior township boundary plat. Then proration applies, based on the platted distance of an official survey and the existing field distance.

(2) For the north tier of sections in a township, the one-quarter corner positions must be established at half the distance and on line between the section corner positions. The one-sixteenth corner positions must be established thereafter at their respective midpoint positions. The entire section is then defined by aliquot parts.

(3) The only time the east, north and south tiers of sections are not platted into aliquot parts is when the east, north or south section line has been established as a correction line. The tract designation, as in (b)(1) of this section, of a section is then applicable. Specific instructions for the correction line will be issued by the director.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.045

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11 AAC 53.160. METES AND BOUNDS SURVEYS. (a) Metes and bounds surveys will be surveyed to class III standards. Class IV standards may be authorized in certain instances. Any survey or platting criteria unique to a particular type of survey will be set forth in special survey instructions issued by the division. For all metes and bounds surveys, both a preliminary plat and a final plat must be prepared in accordance with secs. 220 and 230 of this chapter. A "metes and bounds" legal description must be shown on the plat. The description must begin at a monumented corner position and have an origin of bearing and distance call to an officially recognized monument that has a known relationship to the rectangular survey system. Both of these monuments must have a latitude and longitude established to an accuracy in keeping with the class of survey, with the latitude and longitude of one of them being called out in the legal description. Metes and bounds surveys are used for tidelands surveys, shore fishery development surveys, open-to-entry surveys, homesite surveys, and public and private recreation site surveys.

(b) The following are additional requirements for metes and bounds surveys of tidelands, shore fishery development sites, and open-to-entry sites.

(1) For a tideland survey, the line of mean high tide must be determined as in sec. 120(1) of this chapter, and the final plat must show the course of the shoreline for an additional 400 feet from each side of the survey.

(2) The applicant for a shore fishery development lease need not have an actual field survey. He may have his choice of submitting either a paper plat or a plat that represents an actual field survey. A preliminary plat must be submitted with his application. In the case of a conflict between a lease tract located by a paper plat and a lease tract located by an actual field survey, the field survey governs. If the applicant chooses an actual field survey, then the line of mean high tide must be located as in (1) of this subsection. In addition, the final plat must show the lease number assigned by the division.

(3) For an open-to-entry parcel that was not surveyed before entry, a final survey plat and a surveyor's affidavit, attesting that all field work has been completed in accordance with this chapter, must be filed with the director before the expiration of the lease. The director shall approve or disapprove the survey within 30 days after receiving the final survey plat and affidavit. If the survey is disapproved, a field inspection of the survey will be made within 90 days after disapproval. If the field inspection verifies that all field

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work has been completed in accordance with division of lands survey criteria, as shown on the final plat and as attested to on the surveyor's affidavit, the director may approve the survey. After approval, the final survey plat and the surveyor's affidavit must be filed for acceptance by the division. The survey and platting criteria established by the division of lands prior to May 4, 1978, are the criteria for surveying land entered upon before that date, and the following surveyor's affidavit must be shown on the open-to-entry plat:

I, _____(surveyor's name)_____, being first duly sworn, hereby depose and say that the following matters are true and correct to the best of my knowledge and belief:

1. I am properly registered and licensed to practice land surveying in the State of Alaska. The survey r's field notes which are attached hereto and made a part hereof represent Alaska State Land Survey No. _____, which was made by me or under my direct supervision.

2. All field work has been accomplished in accordance with AS 38.05.077 and with Division of Lands survey and plat criteria, as authorized by AS 38.05.077.

3. The monuments as shown on the field notes and as displayed on the plat of survey actually exist, and dimensions and other details are correct.

_____(date)_____ _____(signature)_____
Date Registered Land Surveyor

Reg. No. ___(number)_____

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this ___ day of _____, 19 __.

_____(signature)_____
Notary for Alaska

_____(date)_____
My commission expires:

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.077

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11 AAC 53.170. HOMESTEAD ENTRY SURVEYS. Before the surveying and platting of a homestead entry parcel under AS 38.05.410 - 38.05.540, the four corners of the section and center one-quarter section corner must be established and monumented with primary monuments in accordance with secs. 190 - 200 of this chapter. Section location must be controlled to class III survey standards. The parcel may not extend beyond a single quarter-quarter section. For a parcel in southeast Alaska that is entirely east of the 141st meridian, entry must be on either the north, east, south, or west half of a quarter-quarter section.

(1) A preliminary and a final plat must be prepared and submitted to the division in accordance with secs. 220 - 230 of this chapter. In addition, if the parcel lies within a city or a first-class or second-class borough, the plat must be submitted to the platting authority for its approval.

(2) A public access easement having a total width of 100 feet, centered on the boundary line, must be surveyed and platted along all sides of the parcel to provide access to navigable and public water. As used in AS 38.05.480, the term "each section of land acquired from the state" means "each parcel of land acquired from the state." Other easements to provide access along navigable and public water must be surveyed and platted in accordance with sec. 330(a) and (b) of this chapter. All public and navigable water must be surveyed and have the water area segregated from the uplands at the time of survey.

(3) The director may grant up to a one-year extension of the time allowed in AS 38.05.440 for survey. A person applying for an extension must be able to show that he exercised due diligence in attempting to complete the survey within the time allowed, and that failure to complete it was due to an act of God or other circumstance beyond the applicant's control.

(4) Any later subdivision of the parcel, or any other action that requires a change or vacation of the original plat, is subject to review by the platting authority having jurisdiction.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.127
AS 38.05.440
AS 38.05.480
AS 40.15.075

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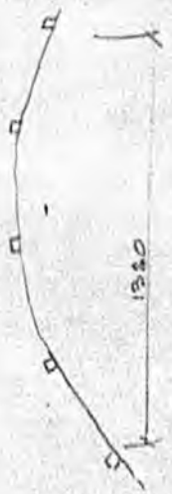
11 AAC 53.180. DEPOSIT FOR SURVEY COSTS. At the discretion of the director, for a parcel that is unsurveyed at the time of entry, the applicant may be allowed to deposit with the division an amount of money that the division estimates is sufficient to cover the cost of surveying and platting the parcel. The division will then be responsible for surveying the parcel and preparing the plat before the expiration of any time limits set by statute. If the amount of money deposited is not sufficient to cover the actual survey and platting costs, the applicant shall pay the remainder before passage of title. The division will refund any unspent funds.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020

11 AAC 53.190. MONUMENTS. (a) Primary monuments must be established for surveys as set forth in this subsection.

(1) Every metes and bounds survey and homestead entry survey must have a minimum of four primary monuments established. The monument must consist of a two-inch nonferrous metal pipe at least 30 inches long with a four-inch flange at the bottom. A two and one-half inch diameter nonferrous metal cap must be permanently attached at the top.

(2) No portion of a survey or subdivision may be more than 1,320 feet from a primary monument.



(3) All angle points along an exterior survey boundary must have a primary monument.

(4) Primary monuments along an exterior boundary may not be situated more than 1,320 feet apart.

(5) If adjacent exterior boundary monuments are not intervisible then an intermediate primary monument that is intervisible must be set.

(6) If an exterior boundary line is less than 2,640 feet but more than 1,320 feet long, then the intermediate primary monument must be set as close to the midpoint as practical.

(7) Should the point for a primary monument be in a place that would be impractical to monument because of natural restrictions such as water bodies, a witness corner must be set. The witness distance must be shown upon the plat of survey, from the existing monument, as set, to the true corner position. Witness corners must always be set on a survey property line and at a distance considered reasonable and practical from the true corner point. Witness corners must comply with the standards for primary monuments.

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(8) If it is impractical to set the primary monument, one of the following may be substituted, with monument accessories as required in sec. 200 of this chapter:

(A) a cross marked in a firm stone;

(B) a cap grouted into a firm stone; or

(C) a tablet containing a minimum of 1,000 cubic inches of concrete and a cap marking the actual corner point.

(b) Secondary monuments must be used for property line curvature control, at interior angle points, and on interior lines that exceed 1,320 feet in length and are not monumented with primary monuments. Secondary monuments must consist of a five-eighths inch metal rod, three feet long, with a one and one-half inch cap attached at the top.

(c) All other corners within the interior of a subdivision must be marked with reinforcing rods or iron pipes, or in a manner prescribed by the platting authority having jurisdiction.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 53.200. MONUMENT ACCESSORIES. (a) All primary monuments must be referenced to at least three bearing trees or objects surveyed to a class IV survey standard, or two reference monuments surveyed to a class III survey standard.

(1) If bearing trees or objects are used, they must be located as nearly as possible at equal angles and no further away than 100 feet from the monument. The distance to trees or objects must be measured at waist height, and in the case of trees, measured to the center of the tree, with distances reduced to a horizontal equivalent. Bearing trees must also be marked with nonferrous metal tags of at least nine square inches in size, which must be placed facing the monument. These tags must be clearly and permanently marked as to the corner nomenclature and distance.

(2) If reference monuments are being used, two must be used, and they must meet the secondary monument standards of sec. 190(b) of this chapter. These monuments must be placed on a property line or at right angles to the monument being referenced and can be no further than 100 feet from the monument being referenced. In addition, they must be marked with the nomenclature and distance to the monument being referenced.

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(b) In addition to the accessories required in (a) of this section, witness posts, a minimum size of a nominal two-by-four, 6' long, with 4' protruding above ground, are required for all primary monuments. They must be set at right angles to the line and no farther than one foot from the monument.

(c) Secondary monuments do not require monument accessories.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 38.05.035

11 AAC 53.210. GENERAL PLAT STANDARDS. All plats that are submitted to or prepared by the division of lands, with the exception of those types of surveys requiring specific data, as defined within the individual category, must conform to these basic standards unless prior approval for change has been granted by the director or it is necessary to comply with another pl ting authority.

(1) The base sheets must be of good quality linen or mylar at least three mils thick, and be one of three standard sizes: 18" x 24", 22" x 36", 31-1/2" x 34".

(2) The sheets must have the official division of lands title block and border configuration.

(3) All line work must be in the appropriate black drafting ink.

(4) All lettering on the plat must be in the appropriate black ink and be accomplished with "mechanical" lettering equipment.

(5) All line work and lettering must be of good quality and all line widths and lettering sizes must be of such size that all information can be clearly shown without overlap or confusion.

(6) When more than one sheet is required, an index sheet must be added showing the entire parcel, with the sheets in numerical order, and each sheet showing the sheet number and total number. When more than one sheet is submitted, only the last need have the approval certificates, but all sheets must be the same size.

(7) The scale must be one inch representing 100 feet or a multiple of 100 feet. A request for the use of another scale may be made to the director.

(8) Details, as necessary, must be shown at an appropriate scale.

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(9) The plat must have a vicinity map, with a scale of one inch representing one mile in the upper right-hand corner, showing sections, townships and ranges, and other boundaries such as national forests, borough, city, etc., and other physical or natural features such as roads, lakes, rivers, etc. The source of the base map used must also be indicated.

(10) Nomenclature of the survey need appear in the title block only, unless the division specifically states otherwise.

(11) The basis of bearings and the origin of geographic coordinates must be shown. Bearings shown must be true bearings, and distances to be shown must be in the foot unit reduced to the true horizontal equivalent, or, at the director's discretion in the metric unit reduced to the true horizontal equivalent.

(12) Bearings and distances must be shown within the accuracy commensurate with the class of survey being represented. However, plats of class IV surveys must indicate bearings rounded to the nearest 15 seconds of arc and distances rounded to a tenth of a foot or to a decimeter, as appropriate.

(13) The plat must have a bar scale showing four units at the same scale as the plat is drawn, and also the relationship to meters and the conversion factor from feet to meters.

(14) An official division of lands legend showing monuments recovered and set for the survey, as well as other monuments used, must be shown.

(15) The date of plat preparation and standard north arrow must be shown.

(16) The following certificates must be shown:

CERTIFICATE OF CLAIMANT (as applicable)

I (we) hereby certify that I am (we are) the legal claimant(s) of the property shown hereon and that I (we) hereby approve this plat of survey.

(date), 19__.
Date

Witnessed by:

(signature in black ink) (signature in black ink)
Witness Owner

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(signature in black ink) (signature in black ink)
Witness Owner

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this ___ day of _____, 19__.

(signature in black ink)
Notary for Alaska

(date)
My commission expires:

OWNERSHIP CERTIFICATE (all plats)

I, the undersigned, hereby certify that I am the director, Alaska Division of Lands, and that the State of Alaska is owner of (name of parcel), as shown hereon. I hereby approve this survey and plat for the State of Alaska.

(date) (signature in black ink)
Date Director
Alaska Division of Lands

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this __ day of _____, 19__.

(signature in black ink)
Notary for Alaska

(date)
My commission expires:

SURVEYOR'S CERTIFICATE (all plats)

I hereby certify that I am properly registered and licensed to practice land surveying in the State of Alaska, and that this plat represents a survey made by me or under my direct supervision, and the monuments shown thereon actually exist as described, and that all dimensions and other details are correct.

Date (date) Registration Number (number)

(signature in black ink)
Registered Land Surveyor/Engineer

(SEAL)

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DEDICATION OF EASEMENTS, PUBLIC UTILITIES AND ROADWAYS (as applicable)

I hereby dedicate for public or private use, as noted, all easements, public utility areas, and roadways as shown and described hereon.

Date (date)

(signature in black ink)
Director
Division of Lands
Department of Natural Resources

SECTION LINE EASEMENT VACATION CERTIFICATE (As Applicable)

Approval Recommendation

State of Alaska Department of Transportation and Public Facilities

The vacation statement, as shown hereon, has been reviewed by the _____ District Office and is hereby recommended for approval by the Commissioner.

Recommended by: (signature in black ink) Date (date)
Title: (title)

State of Alaska Division of Lands

The vacation statement, as shown hereon, has been reviewed by the Division of Lands and is hereby recommended for approval by the Commissioner.

Recommended by: (signature in black ink) Date (date)
Title: (title)

The State of Alaska, acting by and through the Commissioner of the Department of Natural Resources and the Commissioner of the Department of Transportation and Public Facilities, does hereby state and declare that the State of Alaska vacates and releases all rights and title to any and all portions of section line easements for public highways reserved to it under AS 19.10.010. (specific area delineated).

Approved:

Date: (date)

(signature in black ink)
Commissioner
Department of Transportation and Public Facilities

Approved:

Date: (date)

(signature in black ink)
Commissioner
Department of Natural Resources

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LESSEE CERTIFICATE(S) (as applicable)

I (we), the undersigned, hereby certify that I am (we are) the lessee(s) as shown hereon. I (we) hereby approve this survey and plat.

ADL No. (number) (signature in black ink) Date (date)
Tract (number) (name--same as signature)

ADL No. (number) (signature in black ink) Date (date)
Tract (number) (name--same as signature)

NOTARY'S ACKNOWLEDGEMENT

Subscribed and sworn to before me this ___ day of _____, 19__.

(signature in black ink)
Notary for Alaska

(date)
My commission expires:

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020

11 AAC 53.220. PRELIMINARY PLAT STANDARDS. In specific instances for various survey types and classes, the director may require a preliminary plat. The purpose of the preliminary plat is to afford an opportunity of receiving preliminary review of an intended survey and prevent unnecessary expenditure of money and time that would occur if major changes were required after final platting. Conditional approval of the preliminary plat does not constitute approval of the final plat. Rather, it is an expression of approval as a guide to preparation of the final plat. The following are minimum standards for the preliminary plat.

(1) The format of the preliminary plat must comply with the general plat standards as set forth in sec. 210 of this chapter.

(2) A legal description of the location, including latitude and longitude commensurate with the class of survey, must be shown at one monumented corner of the survey; the total acres of the area to be surveyed must be shown.

(3) The name and address of occupant or applicant must be shown.

(4) If the preliminary plat is prepared by a land surveyor, the surveyor's seal must be properly affixed and signed.

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(5) As applicable, the locations of fill material, existing permanent buildings or other structures within the parcel, existing utility lines, mean high and mean low tide lines, and other permanent features, such as section lines, political subdivision or corporation lines, and school district boundaries within the parcel, must be shown on the plat. All roads inside or within 200 feet of the parcel also must be shown. The director may require that the approximate grades of roads, general topography, preliminary lot configuration, and the proposed location of common areas be shown.

(6) The names of adjacent owners or claimants, or an indication that the land is not owned or claimed, and adjacent U.S. Surveys and Alaska State Land Surveys must be shown.

(7) The original or a good quality reproducible of the preliminary plat must be submitted to the division of lands for review, with five blackline or blueline prints.

(8) Applicable certification as required by sec. 210(16) of this chapter must be shown but should not be signed or notarized.

Authority: AS 08.48.221
AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 40.15.010

11 AAC 53.230. FINAL PLAT STANDARDS. (a) All final plats must conform to the general plat standards stated in sec. 210 of this chapter, and in addition thereto, must:

(1) have the notary's seal and surveyor's seal properly affixed;

(2) be presented to the division of lands with the original or a good quality reproducible mylar with five blackline prints;

(3) have the original or reproducible and all prints with all original signatures in all of the required places and in black ink only; and

(4) after final approval by the division of lands, be submitted to the district magistrate's office for the recording district within which the land surveyed lies, for official filing. If the land surveyed lies in more than one recording district, the plat must be submitted to each for filing.

(b) After filing, the official filing data must be affixed to the original plat and becomes a part of it.

Authority: AS 08.48.221
AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 40.15.010

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11 AAC 53.240. TECHNICAL APPEALS. (a) Before giving technical approval to a plat of survey prepared for the division, the director will attempt to give written notice to all persons owning land bordering on the survey, stating that he proposes to accept the survey and plat and that the adjacent landowner may review the plat and file a written technical appeal within 30 days after the notice is mailed. If no technical appeal is filed, the director will accept the plat.

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(b) If a technical appeal is filed in writing with the division, the director may, at his discretion, hold a technical hearing with the appellant. After the hearing is held, the director may allow the appellant 15 days to hire an independent professional surveyor, at the appellant's expense, to review the plat and survey data and submit written technical reasons why the division should not approve the survey. The director may thereafter, at his discretion, accept or reject the survey.

Authority: AS 38.04.035
AS 38.04.045
AS 38.04.900

ARTICLE 3. EASEMENTS AND RIGHTS-OF-WAY

Section
300. Easements and rights-of-way
310. Determination of navigable and public water
320. Written decision concerning easements
330. Easements to and along navigable and public water
340. Directory of easements
350. Surveying and field marking of easements
360. Liability for injury or accident
370. Liability for damages

11 AAC 53.300. EASEMENTS AND RIGHTS-OF-WAY. All easements and rights-of-way reserved under secs. 300 and 330 of this chapter must be surveyed and platted to the accuracy of the adjacent survey, or to class III survey standards, if there is no adjacent survey. In the case of easements along public or navigable water, monuments need to be set only as required by sec. 350 of this chapter. Easements may become rights-of-way after survey and dedication or alienation by the division of lands. Except as otherwise provided by law, easements reserved under this chapter are vested in the state. Easements and rights-of-way of at least the following widths must be surveyed and shown on the plat. When in the public interest, the director may require the survey and platting of additional easements or rights-of-way at the time that survey instructions are issued.

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(1) Public access easements:

(A) the section line easement is 50 feet wide on the state side. If the state is the owne on both sides, then it is a total of 100 feet wide;

(B) the easement for an existing road or trail that does not already have a reserved easement or right-of-way is 30 feet on each side of the centerline of the road or trail.

(2) Public access easements to and along navigable and public water are as required by sec. 330 of this chapter.

(3) Utility easements are 20 feet wide (too narrow) unless a need is demonstrated for a wider easement at time of survey and platting.

(4) Pedestrian easements are 20 feet wide, unless a need is demonstrated for an easement of a different width at the time of survey and platting.

(5) Other easements, as necessary, will be determined at the time of survey.

(6) Rights-of-way:

(A) arterials must be approximately 100 feet wide;

(B) residential roads must be approximately 60 feet wide; and

(C) other right-of-way widths, as necessary, will be determined at the time of survey. (Eff. 12/29/77, Reg. 64; am. / / 79, Reg.)

Authority: AS 38.04.045
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.127
AS 38.05.365

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* 11 AAC 53.310. DETERMINATION OF NAVIGABLE AND PUBLIC WATER. (a) As part of the preliminary written decision required under AS 38.05.035(a)(14) before the sale, lease, grant, or other disposal of any interest in state land, or in a written determination issued with or as part of survey instructions for a homestead entry parcel granted under AS 38.05.410 38.05.540 for which a written decision under AS 38.05.035(a)(14) is not required, the director shall determine whether water adjacent to or contained within the land intended for disposal is navigable water, public water, or neither.

(b) In making this determination, the director shall solicit comment from the Department of Fish and Game and the division of parks, and, if appropriate, from other state and municipal agencies. In addition, the director may use:

(1) a record of historical use, as documented in a book, newspaper, diary, or other published or unpublished source;

(2) published or unpublished records of a public administrative agency;

(3) written or oral information from any other source. (Eff. 12/29/77, Reg 64; am. / /79, Reg.).

Authority: AS 38.04.005
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.127
AS 38.05.440
AS 38.05.480

*Renumbered from a regulation already in effect in 11 AAC 70. Words proposed to be added are underlined; words proposed to be deleted are bracketed and capitalized.

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* 11 AAC 53.320. WRITTEN DECISION CONCERNING EASEMENTS. If the water is determined to be navigable or public water, the director shall, in the preliminary written decision or the written determination referred to in sec. 310 of this chapter, either:

(1) list the easements or rights-of-way that are to be reserved for public access to or along the water under sec. 330 of this chapter; or

(2) state why reserving such easements or rights-of-way is not reasonably necessary to insure public access or why retention of public access is not in the public interest. (Eff. 12/29/77, Reg. 64; am. / /79, Reg.)

Authority: AS 38.04.005
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.127
AS 38.05.440
AS 38.05.480

* 11 AAC 53.330. EASEMENT TO AND ALONG NAVIGABLE AND PUBLIC WATER. (a) The director shall reserve a continuous easement for public access along any water affected by tidal action when land adjacent to that water is conveyed unless the director determines that such an easement is contrary to the public interest. The easement must extend at least 50 [25] feet upland and 50 [25] feet seaward of the mean high water line. Where access along the easement is difficult because of topography or obstructions, an alternate upland access route may also be reserved.

(b) To provide for public access along inland navigable or public water, the director shall reserve a continuous easement on its bed and shores in the conveyance of land adjacent to or containing that water unless the director determines that such an easement is contrary to the public interest. The easement must extend at least 50 [25] feet upland of the ordinary high water mark. Where access along the shoreline is difficult because of topography or obstructions, an alternate upland route may also be reserved.

*Renumbered from a regulation already in effect in 11 AAC 70. Words proposed to be added are underlined; words proposed to be deleted are bracketed and capitalized.

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* (c) If reasonable access is not otherwise available, the director shall reserve an easement or right-of-way to provide access to coastal or inland navigable or public water in the conveyance of land adjacent to or containing that water unless the director determines that such an easement is contrary to the public interest. The easement must be at least 50 [25] feet wide.

(1) If an existing trail, road, or other overland route provides access to the water, an easement shall be reserved for it, as required by sec. 300(1)(B) of this chapter [EXCEPT THAT IF TWO OR MORE TRAILS OR ROADS AFFORD ACCESS TO A ONE-MILE STRETCH OF SHORELINE, ONLY ONE ACCESS EASEMENT NEED BE RESERVED].

(2) If there is no existing trail, road, or other overland access route to the water, but if a public road, railroad, or trail approaches within two miles of the navigable or public water and if overland access from it to the shoreline is feasible, the director shall reserve an easement for this purpose. If the public road, railroad or trail lies parallel to the navigable or public water, the director shall reserve easements for access from it to the shore at intervals of no more than five miles.

(A) A section line right-of-way may substitute for an access easement if the right-of-way provides a practical route to the shore. The right-of-way must be marked as required under sec. 350 of this chapter.

(B) An easement along a tributary stream may substitute for a separate access easement to the main waterway or body of water if the tributary provides a practical and reasonably direct route from the road, railroad or trail or to the shore of the main waterway or body of water.

(3) Additional easements may be reserved to provide increased access where heavy recreational or nonrecreational use exists or is anticipated, to protect portage routes, or to secure access between aircraft landing sites and nearby navigable or public water.

(4) If it is determined, at the time an easement is reserved, that the need for increased public access to navigable or public water may justify construction of a road, the easement reserved must be at least 60 feet wide.

*Renumbered from a regulation already in effect in 11 AAC 70. Words proposed to be added are underlined; words proposed to be deleted are bracketed and capitalized.

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** (d) In determining the easements to be reserved to and along navigable and public water, the director shall solicit comment from the Department of Fish and Game and the division of parks and, if appropriate, from other state and municipal agencies.

** (e) Easements for public access to and along navigable and public water need not be reserved on land to be traded to the federal government if the federal government agrees to reserve such easements before conveying the land into private ownership.

* (f) At the director's discretion, easements for public access to and along navigable and public water need not be reserved on land to be granted or otherwise transferred to a municipality under AS 39.18.201 - 29.18.213 or AS 38.05.315 if the municipality guarantees to reserve easements substantially in compliance with this section before it conveys the land into private ownership.

** (g) The director may limit the time or manner of using an easement or right-of-way or may close it to all use in order to protect public health, safety, wildlife values, or the environment. The director shall post notice on the land in such a manner as to identify prohibited uses. Any assignment of land management authority to another agency must include the authority to limit use of a public easement or right-of-way. (Eff. 12/29/77, Reg. 64; am. / /79, Reg.).

Authority: AS 38.04.005
AS 38.04.050
AS 38.04.055
AS 38.04.440
AS 38.04.480
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.127

*Renumbered from a regulation already in effect in 11 AAC 70. Words proposed to be added are underlined. Words proposed to be deleted are bracketed and capitalized.

**Renumbered from a regulation already in effect in 11 AAC 70. The Department of Natural Resources does not propose to amend this regulation. It is presented here as a convenience to readers.

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** 11 AAC 53.340. DIRECTORY OF EASEMENTS. (a) The director may publish a directory of navigable and public water and of the easements that provide access to and along it.

(b) If a directory is published, it must be available at the offices of the division of lands.

(c) The director may set a fee for the directory. (Eff. 12/29/77, Reg. 64; am. / /79, Reg.)

Authority: AS 38.04.005
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.127
AS 38.05.440
AS 38.05.480

** 11 AAC 53.350. SURVEYING AND FIELD MARKING OF EASEMENTS. (a) The director may require as a condition of any sale, lease, grant, or other disposal of state land that the purchaser, lessee or grantee survey, mark, or survey and mark public easements reserved under sec. 330 of this chapter.

(1) Marking of easements across uplands must include clearly visible monuments or signs at the following places:

(A) at the intersection of the easement and any public road, railroad, trail, or aircraft landing site;

(B) at the intersection of the easement and any navigable or public water;

(C) along the easement, at intervals reasonably sufficient to allow the route to be followed; however, if the easement's route is shown by a clearly visible trail or road, signs along its course are not required.

(2) Marking of an easement along a waterway or body of water must include a clearly visible monument or sign where the easement intersects any public road.

**Renumbered from a regulation already in effect in 11 AAC 70. The Department of Natural Resources does not propose to amend this regulation. It is presented here as a convenience to readers.

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(b) The purchaser, lessee or grantee shall perpetuate and maintain the marking.

(c) No person may obstruct or destroy a marking on an easement or right-of-way. (Eff. 12/29/77, Reg. 64)

Authority: AS 38.04.005
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.127
AS 38.05.440
AS 38.05.480

** 11 AAC 53.360. LIABILITY FOR INJURY OR ACCIDENT. The state does not assume and its lessees and grantees will not be required to assume any liability for injury or accident that occurs to any person using an easement reserved under sec. 330 of this chapter. Nothing in this chapter in any way creates or affects any liability for any injury or accident. (Eff. 12/29/77, Reg. 64).

Authority: AS 38.04.005
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.127
AS 38.05.440
AS 38.05.480

** 11 AAC 53.370. LIABILITY FOR DAMAGES. (a) Nothing in this chapter in any way diminishes the liability of a person using an easement reserved under sec. 330 of this chapter, for any injury or damage to persons, or to real or personal property, caused by that person.

(b) The owner or lessee of the land across which the easement is reserved may not hold the state liable for any injury or damage occurring to the owner's or lessee's interest as a result of the easement. (Eff. 12/29/77, Reg. 64)

Authority: AS 38.04.005
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.035
AS 38.05.127
AS 38.05.440
AS 38.05.480

**Renumbered from a regulation already in effect in 11 AAC 70. The Department of Natural Resources does not propose to amend this regulation. It is presented here as a convenience to readers.

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ARTICLE 4. SUBDIVISION DEVELOPMENT STANDARDS

Section
400. Subdivision development standards
410. Aliquot part subdivision
420. Replats and vacations
430. Surface access
440. Sewer and water systems
450. Utility easements
460. Rights-of-way and easements
470. Greenbelts, reserved areas and public easements

11 AAC 53.400. SUBDIVISION DEVELOPMENT STANDARDS. Secs. 400-470 of this chapter cover minimum subdivision development standards that apply to:

(1) state land subdivided by the division; however, if the ordinances of the local platting authority governing subdivisions are at least as stringent as the requirements of this chapter and the platting authority possesses sufficient resources and enforcement capability to insure uniform compliance with its subdivision ordinances, then that authority's ordinances will govern in lieu of secs. 400-470 of this chapter; and

(2) replats or vacations of private land done in accordance with AS 40.15.075, including the subdivision replat of a cadastral plat originally done by the state or federal government.

Authority: AS 38.04.045
AS 38.04.050
AS 38.04.900
AS 40.15.075

11 AAC 53.410. ALIQUOT PART SUBDIVISION. Within third-class boroughs and the unorganized borough, a quarter-quarter section, or other aliquot part division containing approximately 40 acres, is the smallest subdivision that may be created by aliquot parts without the preparation of a plat.

Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 40.15.075

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11 AAC 53.420. REPLATS AND VACATIONS. (a) No plat of land located within a third-class borough or outside a city in the unorganized borough may be replatted, vacated, or otherwise changed without the approval of the director. Approval for change or vacation of a plat is initiated by filing the original and one copy of a petition with the division of lands in Anchorage. However, if the area to be replatted lies adjacent to the jurisdiction of another platting authority, the director may, if the other platting authority agrees, delegate to it the authority to receive, review, and approve the petition in accordance with its own procedures.

(b) A petition for a replat or vacation filed with the division must contain:

(1) a copy of the original survey plat showing the area for change or vacation;

(2) the name, address and land ownership of each petitioner and all other landowners within the petition area and within 500 feet beyond the petition area;

(3) the action sought by the petitioner and a statement of reasons for the requested change or vacation; and

(4) the name and address of the petitioner or the attorney for the petitioner designated to receive service by mail.

(c) The petition must be accompanied by a filing fee and a fee to cover advertising, recording and other costs in accordance with a fee schedule posted at the district offices of the division.

(d) A public hearing must be held on each petition at a place designated by the director no more than 60 days after the petition has been filed and the fees received. The director shall cause a notice of hearing that meets the requirements of AS 29.33.210 to be published once a week for two consecutive weeks in a newspaper of general circulation published within each judicial district in which the land is located. If no such newspaper exists, the notice must be posted in the local post office or other place of general visitation. A copy of the notice must be mailed by registered mail to each person not joining the petition who has an interest in land located within the petition area or within 500 feet of the petition area, and to each affected public agency and utility.

(e) If the petition is approved, the director shall execute a state platting resolution and notify the petitioner by certified mail. A copy of the resolution will be sent with the notice. The notice will

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require the petitioner to submit to the director the original and three copies, each with an original signature, of the replat. The replat must be prepared at the petitioner's expense. If the replat is not completed within 18 months after the date of the state platting resolution, the platting resolution expires. The director may require a preliminary plat before final platting. If the replat is proper and complies with the standards of secs. 400-470 of this chapter, the director shall approve it. Each agency and utility notified of the petition must be notified of the approval. The director shall record the plat and the state platting resolution in each recording district where there is a portion of the changed or vacated area, and the change or vacation is not valid until the recording has taken place. The division will send to the petitioner a copy of the recorded plat and of the platting resolution showing the recording data. The original copies of the replat and the platting resolution will be maintained by the division.

(f) A replat showing a change and submitted to the division must contain the following standard certificates:

(1) surveyor's certificate;

(2) certificate of approval by the state;

(3) certificate of ownership; and

(4) section line easement vacation certificate, if applicable.
(Eff. 6/16/72, Reg. 42; am. / / 79, Reg.)

Authority: AS 38.04.045
AS 38.04.900
AS 38.15.075

11 AAC 53.430. SURFACE ACCESS. Legal access must be provided to the subdivision. At the director's discretion, physical access may be required to be constructed, including roads meeting the standards of this section, as well as airfields and waterway facilities. For land subdivided by the division, the direct costs of such construction must be borne or repaid by the recipient of the land.

(1) All-weather access roads are roads built from existing roads, airfields and waterway facilities to the subdivision. The travel surface width must be at least 24 feet, and adequate drainage must be provided by crowning, ditching, and installing culverts. The road surface must consist of at least 12 inches of gravel laid down after clearing and grubbing the bed, or an overlay of at least three feet of gravel.

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Art 4

(2) Interior all-weather roads are roads within the subdivision that provide access to individual lots. The travel surface width must be at least 18 feet, and adequate drainage must be provided by crowning, ditching, and installing culverts. The road surface must consist of a minimum of six inches of gravel laid down after clearing and grubbing the bed, or an overlay of at least two feet of gravel.

(3) For land subdivided by the division, where appropriate, the director may contract for the construction of other access roads that do not necessarily ~~meet the~~ standards of (1) and (2) of this subsection, with payment to be made in land credit certificates ~~issued~~ by the division.

(A) Certificates will be issued in denominations of $1,000, $500, $100 and $10.

(B) Certificates are assignable. The assignment becomes effective immediately upon acknowledgement by the division.

(C) Certificates may be utilized for application fees of all types, including applications for uplands, timber, coal, oil and gas, and mining. They may be used for the payment of rentals, principal payments on purchase contracts, accrued interest, bonuses, royalties, material contracts, bonds required under material sales contracts, stumpage charges, and to offset the cost of plats prepared by the division. Land credit certificates will not be accepted for oil and gas bonds, mining lease bonds, or timber contract bonds, nor may they be utilized to cover the cost of or deposits for survey or advertising.

Authority: AS 19.30.100
AS 38.04.045
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 40.15.075

11 AAC 53.440. SEWER AND WATER SYSTEMS. (a) The subdivision's sewer and water systems, whether on-site, community, or public, must comply with the requirements of the Department of Environmental Conservation in 18 AAC 70 and 72.

(b) If the Department of Environmental Conservation or the local platting authority prohibits on-site sewer or water systems on land subdivided by the division, the director may contract to construct a community sewer or water system meeting the requirements of the Department of Environmental Conservation or the local platting authority, or to tie into a public sewer or water system. Costs will be prorated among the disposal parcels in the subdivision on the basis of acreage in each parcel.

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Authority: AS 38.04.045
AS 38.04.900
AS 38.05.020
AS 40.15.075

11 AAC 53.450. UTILITY EASEMENTS. (a) The subdivider will consult with the utility companies in whose service area the subdivision lies to insure that the utility easements reserved are of adequate width.

(b) If no utility company presently provides service to the area, a utility easement 20 feet wide must be reserved to allow future service to each parcel.

Authority: AS 38.04.050
AS 38.04.900
AS 38.05.020
AS 40.15.075

11 AAC 53.460. RIGHTS-OF-WAY. (a) A right-of-way for an all-weather access road under sec. 430(1) of this chapter must be approximately 100 feet in width.

(b) A right-of-way for an interior all-weather road or for other roads under sec. 430(2) and (3) of this chapter must be approximately 60 feet in width.

(c) Existing legal access of a width narrower than is required by (a) and (b) of this section may be acceptable if it presents no threat to the public health, safety and welfare.

(d) For all roads, slope easements must be reserved where embankments are likely to extend beyond the right-of-way.

Authority: AS 38.04.045
AS 38.04.050
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 40.15.075

11 AAC 53.470. GREENBELTS, RESERVED AREAS, AND PUBLIC EASEMENTS. (a) When land adjacent to a highway that is part of the state's primary or secondary road system is subdivided, a strip of land having a common boundary with the highway right-of-way must be reserved and dedicated for public ownership as a greenbelt. The width of the greenbelt will be approximately 300 feet if the land being subdivided is state land, and 150 feet if it is private land subject to the division's replat authority, but the director may require that a wider or narrower greenbelt be reserved, depending on vegetative cover, the view from the roadway, topography, or other relevant factors. However, no greenbelt need be reserved if:

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(1) the parcel being disposed of is an isolated one already surrounded by private land on which there is no greenbelt, so that no reasonably continuous greenbelt is feasible; or

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(2) existing land use on adjacent parcels, or existing land use policy as set forth in a local comprehensive plan or a land use plan prepared by the division, clearly indicates that reserving a greenbelt is unnecessary or undesirable.

(b) The director may require that the plat of residential subdivision provide for the dedication of open space, parks, trails, or recreation areas within its boundaries, and will base the amount of land to be dedicated on the proposed population density of the subdivision. Land dedicated under this subsection must be reasonably adaptable to active park and recreation uses and must be in a location convenient to the subdivision's residents. Factors the director will use in evaluating the adequacy of the proposed open space, park, trail, or recreation area include size, shape, topography, geology, tree cover, access and location.

(c) When land that contains or borders on public water is subdivided, at the director's option, either:

(1) public access easements to and along the water must be reserved as required under sec. 330 of this chapter, with the widths listed in sec. 330 to be considered only as minimums; or

(2) easements to the water must be reserved as required under sec. 330(c) of this chapter, and a waterfront greenbelt, at least 50 feet wide, must be retained in public ownership along the water in lieu of reserving the easements required under sec. 330 (a) and (b). A wider greenbelt must be reserved if appropriate because of flood plain width, 100-year flood heights, bank characteristics, size of the water body, extent of public use, and other relevant factors. The waterfront greenbelt must be of sufficient width to allow for public access as well as to screen the subdivision with an undisturbed strip of vegetation, where possible.

Authority: AS 38.04.005
AS 38.04.015
AS 38.04.045
AS 38.04.055
AS 38.04.900
AS 38.05.020
AS 38.05.127
AS 38.14.075

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ARTICLE 5. GENERAL PROVISIONS.

Section
500. Definitions

11 AAC 53.500. DEFINITIONS. Unless the context clearly indicates otherwise, in this chapter:

(1) "adjacent" means near but not necessarily touching;

(2) "aliquot parts" means land description within a rectangular survey system, as established by the United States Department of Interior, Bureau of Land Management, using the section method of describing parcels of land by half sections, quarter sections, or any further division into equal halves or quarters with no remainder;

(3) "arterial road" means a road that is used primarily for fast or dense traffic flow;

(4) "bearing object" means any object, other than trees and monuments, that may be used by the state as primary monument accessories;

(5) "cadastral rectangular survey" means a survey that defines the rectangular system of surveys as accomplished by the United States Department of the Interior, Bureau of Land Management, and the division of lands. The survey may or may not be identical with the protracted system of rectangular surveys, as administratively approved on official protraction diagrams;

(6) "coastline" means the line of ordinary low water along that portion of the coast that is in direct contact with the open sea, and the line marking the seaward limits of inland water;

(7) "coastal water" means water along the coast of Alaska influenced by the tides;

(8) "course" means bearing and distances expressed to the accuracy used in the class of survey being conducted;

(9) "geodetic coordinates" means the quantities of latitude and longitude that define the position of a point on the surface of the earth, with respect to the reference spheroid; also called "geographic coordinates" (based on Clark's spheroid of 1866, which was corrected for Alaska in 1927); C 05 pu 1980

(10) "geodetic survey" means a survey in which account is taken of the shape and size of the earth. Geodetic surveys are usually prescribed where the area or distances involved are so great that results of desired accuracy and precision can be obtained only by the process of geodetic surveying;

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(11) "horizontal control" means control with horizontal positions only. The positions may be referred to the geographic meridians or to other lines of reference, such as plane coordinate axes;

(12) "land survey" means the process of determining boundaries and areas of land parcels;

(13) "limits of error" means the maximum permissible error, as expressed in a linear ratio establishing the precision of distances and angles assigned to control the accuracy standards of a survey;

(14) "mean high water" means the tidal datum plane of the average of all the high tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(15) "mean high water line" means the intersection of the datum plane of mean high water with the shore;

(16) "mean low water" means the tidal datum plane of the average of the low tides, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(17) "mean lower low water" means the tidal datum plane of the average of the lower of the two low waters of each day, as would be established by the National Geodetic Survey, at any place subject to tidal influence;

(18) "to meander" a water body means to establish courses along the ordinary high water mark between land and water boundaries for segregation of uplands and shorelands underlying state navigable or public water;

(19) "metes and bounds survey" means a survey that is accomplished from precomputed information, such as a preliminary or final plat;

(20) "monument" means the permanent, physical item placed or existing at a corner position to define and mark the boundaries of a parcel of land;

(21) "navigable water" means as defined by AS 38.05.365(22);

(22) "offshore" means submerged land lying seaward from the line of mean low tide;

(23) "ordinary high water mark" means the mark along the bank or shore up to which the presence and action of the nontidal water are so common and usual, and so long continued in all ordinary years, as to leave a natural line impressed on the bank or shore and indicated by erosion, shelving, changes in soil characteristics, destruction of terrestrial vegetation or other distinctive physical characteristics;

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(24) "paper plat" means essentially the same as an actual plat of survey, except that the pertinent data is derived from a compilation of official survey data and no actual field survey was accomplished;

(25) public access easement" means an easement retained by the state at the time of disposal of state land, to insure the continued access to state land and public waters.

(26) "public water" means as defined by AS 38.05.365(23);

(27) "quarter-quarter section" means one-sixteenth of a normal section, formed by dividing a quarter section into four parts by lines connecting the midpoints of opposite sides, and containing 40 acres, more or less;

(28) "rectangular survey system" means a system of surveys in which an area is divided by a base line intersected at right angles by a principal meridian with the intersection termed the initial point from which the partitions are subdivided into equal size townships, each containing 36 sections of land;

(29) "replat" means the redelineation of an existing lot, block, tract, or parcel of a previously recorded subdivision or other survey, involving the change of property lines, or in the case of a vacation, the altering of dedicated streets, easements or public areas.

(30) "residential road" means a road that is primarily used within a residential subdivision;

(31) "state plane coordinates" means the plane rectangular coordinate system established by the United States Coast and Geodetic Survey (now National Geodetic Survey) for use in defining positions of geodetic stations in terms of plane rectangular (X and Y) coordinates;

(32) "subdivision" means as defined in AS 40.15.190(2);

(33) "submerged lands" means as defined in AS 38.05.365(17);

(34) "supplemental cadastral survey" means the establishment of additional cadastral survey boundaries within an existing cadastral survey;

(35) "survey plat" means a diagram drawn to scale, showing all essential data pertaining to the boundaries and subdivision of a tract of land, as determined by survey or protraction;

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(36) "surveyor," "registered surveyor," or "professional land surveyor" means a person who has been registered by the State of Alaska Board of Registration for Architects, Engineers and Land Surveyors to practice land surveying in Alaska;

(37) "tidelands" means as defined by AS 38.05.365(18);

(38) "tract" means a lot or parcel of land, especially an odd sized parcel on the west side of the west tier of sections in a township;

(39) "true bearing" means the direction of a line measured by horizontal angle from true north, which is derived from the celestial meridian.

(40) "vertical control" means the measurements taken by surveying methods for the determination of elevation only with respect to an imaginary level surface, usually mean sea level.

Authority: AS 38.04.045
AS 38.05.020
AS 38.05.035

11 AAC 62.640;

REPEALER: 11 AAC 62.260-300; / 11 AAC 64.500-560; 11 AAC 68; and 11 AAC 70 are repealed.

11 AAC 62.260. PRELIMINARY PLAT. Repealed.
11 AAC 62.270. PRELIMINARY PLAT REQUIREMENTS. Repealed.
11 AAC 62.280. SURVEY PROCEDURE. Repealed.
11 AAC 62.290. PROCEDURE ON FINAL PLAT. Repealed.
11 AAC 62.300. FINAL PLAT REQUIREMENTS. Repealed.
11 AAC 62.640. FINAL PLAT OF SURVEY. Repealed.
11 AAC 64.500. GENERAL PLAT REQUIREMENTS. Repealed.
11 AAC 64.510. PAPER PLAT PROCEDURE AND REQUIREMENTS. Repealed.
11 AAC 64.520. SURVEY REQUIREMENTS. Repealed.
11 AAC 64.530. PRELIMINARY PLAT REQUIREMENTS. Repealed.
11 AAC 64.540. SURVEY PROCEDURE. Repealed.
11 AAC 64.550. PROCEDURE ON FINAL PLAT. Repealed.
11 AAC 64.560. FINAL PLAT REQUIREMENTS. Repealed.
11 AAC 68.010. APPROVAL REQUIREMENTS. Repealed.
11 AAC 68.020. PETITION. Repealed.
11 AAC 68.030. TIME, PLACE AND NOTICE OF HEARING. Repealed.
11 AAC 68.040. RESOLUTION AND REPLATTING. Repealed.
11 AAC 68.050. CERTIFICATION AND APPROVAL FORMS. Repealed.

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11 AAC 68.060. DISAPPROVAL OF PETITION. Repealed.
11 AAC 68.100. TITLE TO VACATED AREAS. Repealed.
11 AAC 68.110. DEFINITIONS. Repealed.
11 AAC 70.010. DETERMINATION OF NAVIGABLE AND PUBLIC WATER. Repealed.
11 AAC 70.020. WRITTEN DECISION CONCERNING EASEMENTS. Repealed.
11 AAC 70.030. EASEMENTS TO AND ALONG NAVIGABLE AND PUBLIC WATER. Repealed.
11 AAC 70.040. DIRECTORY OF EASEMENTS. Repealed.
11 AAC 70.100. SURVEYING AND FIELD MARKING OF EASEMENTS. Repealed.
11 AAC 70.200. LIABILITY FOR INJURY OR ACCIDENT. Repealed.
11 AAC 70.210. LIABILITY FOR DAMAGES. Repealed.
11 AAC 70.900. ADMINISTRATION. Repealed.
11 AAC 70.910. DEFINITIONS. Repealed.

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Alaska State Legislature

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE
Don Bennett, Chairman
M. "Ed" Dankworth
George Hohman

HOUSE OF REPRESENTATIVES
Oral E. Freeman, Vice-Chairman
M.F. "Mike" Beirne
Charlie Parr

PLEASE NOTE ENCLOSED MATERIAL REGARDING LOT SEWAGE DISPOSAL FOR TOMORROW EVENING'S ARRC MEETING, 7:00, SENATE FINANCE ROOM.

Carla

Feb 16. Sandy: Copy this and send Copy to Senator Bennett Chel

Sewage regs may haunt state land sale program

By SUSAN FISHER
News-Miner Bureau

JUNEAU—A tiff in Ketchikan set it off, but other areas may face similar showdowns over sewage disposal standards under the state's land sale program.

The News-Miner learned Friday that of 50 state land parcels offered for sale to the public, only 30 were approved for on-site sewage disposal and water use.

The remaining 20 probably will carry "conditional approval," including some restrictions on the platting regarding waste disposal and water use.

Conditional approval is spelled out on the land plat, and varies depending on the intended land use. What it can mean for those wanting to build homes on conditionally approved sites is difficulty in getting bank financing if they don't abide by Department of Environmental Conservation regulations.

A land sale in Ketchikan caught the state's attention after the Legislature did not approve supplemental funding for DEC.

Earlier this week Commissioner Ernie Mueller announced he will lay off 125 DEC workers March 1 if the Legislature does not appropriate the money.

Rep. Oral Freeman, D-Ketchikan, who has been battling DEC over the sewage regulations, sees the confrontation as another administrative attempt to thwart the intent of the land sale program.

Legislators last year passed House Bill 66, ordering the state to offer the public 100,000 acres of land each year.

Doug Lowery, DEC regional environmental supervisor in Fairbanks, said a number of the state lands offered for sale in the Interior are among the conditionally approved parcels, either because of permafrost or high water tables.

The land offered for sale in Ketchikan has a muskeg soil, with a clay layer and bedrock beneath it. DEC has refused to allow on-site waste disposal, based on a soil consultant's report.

Lowery said soil studies are made after the Department of Natural Resource's Division of Lands selects the parcels to be offered for sale. The consulting work is done by hired, private firms.

DEC Deputy Commissioner Deming Cowles said improper sewage disposal can not only contaminate water supplies, but lead to several diseases, such as hepatitis and dysentery.

Consultants found an already high human waste count in Ketchikan water, Cowles said.

The public health and the ability of soils to absorb waste are among factors DEC looks at in deciding if on-site sewage disposal will be permitted, Cowles indicated.

DEC also has said no to using compost toilets on the Ketchikan lots that will be offered for sale.

What the department is pushing for is installation of a closed sewage disposal system, such as a vault privy system or a collector system with small individual package plants.

But Freeman, who supports an approach more like the old homesteading program, doesn't buy the department's arguments.

With 130 inches of rainfall each year, Ketchikan residents for years have been collecting their water off roofs, Freeman says.

And the $2 million or more road and sewage installation the state wants to impose on the land for sale would mean an individual assessment upward of $13,000 on each half-acre lot, Freeman said.

But he is finding himself at odds with some Ketchikan municipal officials, who are willing to go along with the improvements.

Cowles says that if the Ketchikan borough declares the land a service district, it may become eligible for state sewer and road improvement money.

The state plans to subdivide the Ketchikan land into half-acre lots. Freeman, believing larger lot sizes might make a difference, got the Division of Lands to agree that it could be offered in three- and five-acre lots.

But lot size made no difference regarding the DEC regulations.

Cowles said the plat restrictions could make it difficult for individuals to get financing, but "banks don't like to finance lots with no improvements" anyway.

The Ketchikan matter is resolvable, Cowles said, and DNR, Division of Lands, and DEC officials have been conferring with legislators this past week.

"We're talking about coming up with a couple of different types of systems," Cowles said.

Resolution backs airport switch

Municipal government leaders from Anchorage and Fairbanks agreed Friday to press the state to work on greater local control of airports in the two cities.

The plan came in a resolution passed in the joint meeting of the Anchorage municipal assembly and the Fairbanks City Council and Borough Assembly in Anchorage.

The resolution asks for joint efforts of the local governments and the state Department of Transportation to "begin to develop local management options . . . for the acquisition, management and/or ownership of the international airports."

Anchorage leaders have announced they want to take over the Anchorage International Airport, but for both airports to ensure a taxation burden will not be levied on the citizens of either community."

The resolution urged the transfers be made by July 1, 1981, and that transfer of airport management or ownership take place only upon the joint agreement of all local governments.

Another resolution adopted in the meeting supported a bill in the Legislature, SB 385, for building an electric power line between Fairbanks and Anchorage. The group also went on record in support of SB 294 and SB 295, which provide for construction of the Susitna River hydroelectric project by the Alaska Power Authority.

Two resolu[illegible]

February 7, 1980

QUESTION: How many acres and how many lots in proposed "Mud Bay" land disposal proposed in Ketchikan?

Ron Schonenbath, Div. of Land (465-2433)

117 Lots

265.7 acres to dispose of but 197.4 acres are right-of-ways and greenbelt areas. Actual acres 68.3

.5
117 / 68.3
55 3
98

1/2 acre per lot

3 acres per lot x 75 = 225 acres

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

POUCH M
JUNEAU, ALASKA 99811

January 11, 1980

The Honorable Carroll G. Fader
Borough Mayor
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Dear Mayor Fader,

This acknowledges receipt of your letter of January 8 in regards to the proposed classification and disposals of 265.7 acres of land within U.S.S. 3769 six miles northwest of Ketchikan, emphasis on the proposed homesite parcels.

I will not undertake to respond to the main thrust of your letter at this time since further discussions are indicated.

Thank you for the generous offer of assistance and that of the planning department. I am hopeful and confident a way can be found to satisfy both our statuatory burden and Borough needs.

Sincerely yours,

THEODORE G. SMITH, Director

By:

Henry Lee Hall
District Manager
Southeastern Lands District

HJGLH



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

ALASKA DIV. OF LANDS

JAN 10 1980

RECEIVED

January 8, 1980

Henry Lee Hall, Manager
Southeastern Lands District
Division of Forest, Land and Water Management
Alaska Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Attention: Ron Shonenbach, Land Management Officer

Dear Mr. Hall:

This acknowledges receipt of your letter of December 3, 1979 notifying Ketchikan Gateway Borough of the Division's intent to classify and dispose of 265.7 acres of land within USS 3769, 6 miles northwest of Ketchikan. I understand that the Division has filed a preliminary subdivision plat for Platting Board review, but has not petitioned the Borough for a rezone of the Mud Bay area. USS 3769 is currently zoned Future Development (FD) and must be rezoned to a residential category prior to development.

As discussed in previous correspondence and conversations between Borough and Division staff, we are concerned about the consequences of selling 134 parcels in the upper Mud Bay area without road and sewer improvements. The Mud Bay subdivision is not accessed by an existing road and, due to poor soil cover, is not approved by Alaska Department of Environmental Conservation for on-lot sewage disposal. Yet, as your letter states, 20 percent of the parcels are to be released under the homesite program. Hence, 27 candidates for parcels in the Mud Bay subdivision must construct dwellings in just over two years and occupy them for 35 months within the first five years to receive marketable title to their lots. Securing financing to construct a house without marketable title to the land is likely to be problematic for the homesite participant; organizing other land recipients, most of whom will not be bound by homesite deadlines, to construct and maintain costly roads and sewers may prove impossible. Due to these concerns, the Borough Assembly is recommending to the Planning and Zoning Commission (Platting Board) that the Mud Bay subdivision plat not be approved.

The plat review and rezone hearings will provide a forum for the community to discuss the proposed disposal in greater depth. Please do not hesitate to call on me or the planning department if we may assist you in preparing and submitting your rezone application.

Sincerely,

Carroll G. Fader
Borough Mayor

KC:wr
cc: Planning and Zoning Commission
Russell W. Walker, Municipal Attorney



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

February 6, 1980

The Honorable Oral Freeman
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Representative Freeman:

The large lot vs. small lot issue revolving around the Mud Bight disposal is becoming increasingly confused. I'll start from the beginning to explain why this department is recommending to the Borough Planning Commission that the subdivision layout design of 116 lots ranging in size from one-half acre to 30,000 square feet (attachment 1) be approved.

In fall of 1978 the state was pursuing development of three large subdivisions in the Ketchikan area - Mud Bight, South Saxman and Mountain Point. The consulting engineers, Charles Pool and Associates and Tryck, Nyman and Hayes, informed the Borough Land Committee and planning department staff that the soils comprising the Mud Bight and South Saxman subdivisions were not capable of absorbing sewage disposed on-site using conventional, affordable treatment systems. Because of the Land Committee's concern that this problem would hinder not only state land disposals but also future borough disposals, planning staff urged DEC to begin working with the engineers, DNR and the Land Committee to find a means of addressing sewage disposal in areas around Ketchikan that do not have on-site absorption capabilities.

Attachment 2 includes reports prepared for and summarizing the workshop that followed which the Land Committee, the Planning Commission, the two engineering firms, DEC, DNR and the planning department attended. The engineers presented their findings and, as the memo from the Division of Lands states, they concluded that "the soils in all three areas have very limited capability to handle on site disposal of waste water." At that time it appeared that a central sewage collection and disposal system would be required to meet DEC and EPA standards. After many discussions between DEC and Borough representatives, DEC has approved use of a central collection system connecting individual treatment plants (attachment 3).

The Southeast District Lands Office notified the Borough Manager August of 1979 (attachment 4) that, of the three proposed subdivisions, the Division was preparing Mud Bight for disposal in FY 80. As the letter states, even with lot sizes ranging from 3 to 5 acres, the plat would be filed with a notification "to the effect that the subdivision is not approved by DEC for on-site disposal unless a closed system is used."

When Pool and Associates presented three alternative subdivision layouts for Mud Bight the planning department was given a day to comment before the Division selected the layout. Staff, working with a member of the Planning Commission, sent a letter endorsing the clustered lot concept (attachment 5). The commission members have since reviewed and concurred with the department's recommendation. This design will minimize the short and long term costs of constructing and maintaining both roads and a common sewage collection system by: (1) maximizing the number of property owners to be served per road and sewer line, (2) minimizing the land area to be covered by improvements, and (3) taking advantage of the terrain to minimize costs of installing roads and a gravity flow sewage collector line. The cluster design allows for sparsely populated settlement by concentrating lots on lands suited for residential use while leaving steep, wet and muskeg soils as open space.

Based on the information we received, larger 3 to 5 acre lots would not result in DEC approval. However, a large lot subdivision would increase the costs to be borne by land owners for road and sewer line construction and maintenance. As you can see from the attached subdivision layout, if land area were a solution to the waste disposal problem, the large area of open land surrounding the half acre to 30,000 square foot lots would fulfill this requirement in the same manner as large lots - but larger lots will result in higher improvement costs.

I hope this and the attached materials explain to your satisfaction why the planning department is recommending that the Planning Commission endorse the present Mud Bight subdivision layout. If not, or if I can provide further information, please do not hesitate to call.

Sincerely,

Kathryn L. Carssow
Planning Director

KC:wr
Attachments

cc: Mayor and Borough Assembly
Planning Commission
Theodore G. Smith, Director, Division of Forest, Land and Water Management
Henry Lee Hall, Manager, Southeast Land District
Randolf Bayless, Regional Environmental Supervisor

ATTACHMENT 1

TRYCK NYMAN & HAYES
ENGINEERS / PLANNERS / SURVEYORS

Job No. 7601

September 7, 1978

Mr. Claud M. Hoffman
Chief, Cadastral Engineer
Division of Lands
Department of Natural Resources
323 East 4th Avenue
Anchorage, Alaska 99501

FILE

Re: A.D.L. Subdivision, Mud Bay, Alaska

Dear Claud:

This letter is to inform you that we are holding back from doing any work on a preliminary layout for Mud Bay subdivision, per your verbal request on Thursday, August 31.

Currently we are finishing the paper work from the field data collected in Phase I: topo map; plots for penetration tests, test pits, and percolation tests. Upon completion of our office work we will bring a stop to all work other than correspondence.

Last Friday I had a meeting with Mark Bergar of the Department of Environmental Conservation. His opinion at that time was that we do not have adequate ground cover above bedrock for on-site sewage treatment. This will eliminate a subdivision designed for year-round living, although he did say that it could possibly be satisfactory for recreational use; summer homes using a Forest Service type outhouse. The Department of Environmental Conservation should be giving us a formal reply this week.

Enclosed is a map of our penetration test, test pits and percolation tests along with logs of the test pits and results of the perc tests. We are waiting for further instruction from your office.

Sincerely,

TRYCK, NYMAN & HAYES
Southeast Alaska Branch

By Tom Kirchner
Tom M. Kirchner

TMK:lb

Enclosure

RYCK
NYMAN
&HAYES

September 7, 1978

Job 7601.0

SITE REPORT
A.D.L. SUBDIVISION
MUD BAY, ALASKA
U.S.S. 3769

U.S. Survey 3769 has three general regions. The east one-third is comprised of a large hill covered with tall spruce, hemlock and cedar. The soil generally consists of one to two feet of organic and silty organic soils.

A second area that includes the north one-fourth and west one-third has a dense growth of tall spruce, hemlock and cedar. The ground is arrayed with many small gullies and streams. Through the center and west one-third of the U.S. Survey, there are several deep stream valleys, with one sinking to forty-five or fifty feet deep. Soils consist of one to two feet of organic and silty organic soil. Towards the center of the U.S. Survey there is considerable water that flows through the organic soil layers.

The center area of the U.S.S. is mostly comprised of muskeg with scattered shore pine. There are some small knolls throughout. Surface water drains either towards the collection of streams that drain into Mud Bay or toward the southeast. There are very few streams on the southeast side. Soil, for the most part, is comprised of organic and silty-organic soils that average two to five feet deep.

Bedrock for the site consists of shale with a layer of silty-sand and broken shale fragments over its surface.

TK

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

PRELIMINARY PLAT

OF SURVEY

NAME OF SURVEYOR

CHARLES PEAK & ASSOC, INC

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES
ANCHORAGE, ALASKA

ASKA STATE LAND SURVEY NO. 79-243

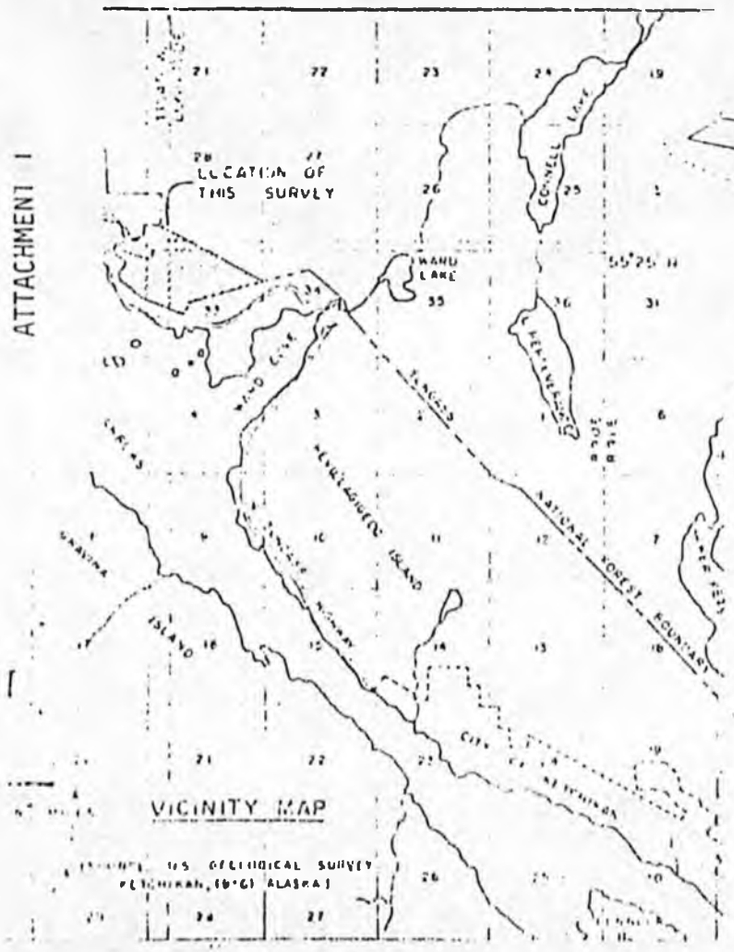
UBDIVISION OF LOT 2, U.S. SURVEY 3769

MUD BIGHT

ATTACHMENT I

LEGEND

- GLO OR BLM MONUMENT AS NOTED
- DTS OFFICIAL OR PRIMARY BRASS CAP MONUMENT SET
- COPPER WELD OR ELOXADIZED STEEL AUX MONUMENT SET
- 3/4 INCH IRON PIPE SET
- USC & GS, USGS, USCE, AND BLM ET AL MONUMENTS (DEFINED BY AGENCY AS APPLICABLE)
- ( ) BEARINGS AND DISTANCES IN PARENTHESIS ARE RECORD U.S SURVEY 3769



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

ATTACHMENT 2

MEMORANDUM

DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO: Andrew W. Pekovich
District Lands Officer

DATE: October 26, 1978

FILE NO: 1430, 2300

TELEPHONE NO:

FROM: Vic Lonn
Land Disposal Officer

SUBJECT: Land Disposals - Ketchikan

On October 10, 1978, a meeting was held in Ketchikan, at the request of the Alaska Department of Environmental Conservation, to discuss site characteristics and limitations on three subdivisions proposed by the Division of Forest, Land and Water Management. These subdivisions are at Mud Bay, Saxman and Mountain Point and have had preliminary survey and soils work done under engineering service contracts.

The meeting was well attended by our engineering consultants, representatives from the Ketchikan Gateway Borough, and Alaska Department of Environmental Conservation. A complete list is attached. Ron Thiel, project engineer; Ed Yarmak, soils; George Marks, surveyor; and I represented the Division of Forest, Land & Water Management.

Ron Thiel gave a general overview of the three projects and their present status. Bruce Hoffman and Ron Flinn spoke on DEC standards and procedures. The DEC must approve any subdivision of five or more lots. Their primary concern, in this instance, is with waste water disposal.

The discussions by Mr. Frank Nyman, of Trych Nyman and Hayes, on the Mud Bay project and Mr. Dave Benson, of Charles Pool and Associates, on Saxman and Mountain Point indicated soils on all three areas have very limited capability to handle on site disposal of waste water. The project areas are characterized by organic soils overlaying bedrock. The information available at this time indicates that in order to produce a quality subdivision and meet DEC standards it will be necessary to provide for central sewer collection and disposal. This requirement plus the cost of providing adequate road access will require a very sizeable capital investment prior to offering these subdivisions to the public.

We stated that our intent on any subdivision offering was to provide a quality product that met all Borough and DEC standards. Ron Theil advised that we would continue evaluation thru our consultants and present a budget request, with back up data, for the necessary capital investment funding to enable development of all three projects.

The Borough advised that they would be taking an additional look at the projects and would keep us advised of their concerns and recommendations.

On the whole, the meeting was on a positive note and served to let the Borough and DEC know where we are with these proposals and what follow up will be necessary.

cc: Ron Thiel
Bruce Hoffman
Min Pt File
Kathy Carsson
Saxman File
Mud Bay File
Claud Hoffman
Dick LaFebvre

ATTACHMENT 3

file Mud Bight Subdivision

STATE OF ALASKA

DEPT. OF ENVIRONMENTAL CONSERVATION

JAY S. HAMMOND, GOVERNOR

SOUTHEAST REGIONAL OFFICE / POUCH O – JUNEAU 99811

January 23, 1980

Kathy Carssow
Planning Director
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Dear Ms. Carssow:

Re: Mud Bight Subdivision

After our September 27th discussion in your office, we followed up your suggestion that a central collector sewer could be the solution to an otherwise sticky problem. Both D.N.R. and our municipal grants people agree that this is feasible, and your proposed lot layout is well designed for this type of service.

Soil conditions in the proposed subdivision are so bad that on-lot sewage disposal would simply not work and there's no way that we could legally approve on-lot sewage disposal. The alternative of central collection sewer receiving treated sewage from individual or clusters of dwellings served by their own small treatment plants has several advantages--

--lower initial sewer costs with pay-as-you-develop treatment costs, eliminating an over-sized and costly central community treatment plant receiving less than "design flow" for who knows how long

--infiltration of ground water into sewers causes no pumping expense or treatment difficulties associated with dilute sewage

--treatment costs are borne directly by the individual treater(s)

The only hitch is that an entity capable of receiving municipal grant funds and responsible for operation must administer the construction and maintenance of that central collector sewer.

The Department presently has grant funding available to incorporated municipalities to fund 50% of the non-federal cost of water and sewerage system construction. Communities accepting funding must agree to assume responsibility for on-going operation and maintenance of the facilities constructed. Projects funded under this program include water treatment and distribution, and sewage collection. Sufficient funds presently exist to fund projects on an as requested basis.

The Department also administers grant funds allocated by EPA to the State for construction of sewage treatment facilities. These funds can cover 75% of eligible project costs (85% if the project employs innovative or alternative technology). State funds can also be used to supply half the non-federal share for such projects. Thus 87.5% of the project costs are funded by State/Federal Grants, as is the case with the facilities currently being constructed by the City of Ketchikan.

Further grant information and application procedures can be obtained by calling Bob Martin of the Department's Facility Construction and Operations office at 465-2611.

In order to relieve the apparent demand for building sites in Ketchikan, this alternative seems to be the best solution for this particular development proposal. I hope that we will be able to assist you in the development of services to the potential home owners in the area.

Sincerely,

Randolph Bayliss
Regional Environmental Supervisor

cc: Henry Lee Hall
Ron Shonenbach
Bob Martin
C. Deming Cowles

DEPARTMENT OF NATURAL RESOURCES

ATTACHMENT 4

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

July 5, 1979

Re: 2300 Land Disposal

Ms. Judi Slajer
Borough Manager
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Dear Ms. Slajer:

This is to advise you that the Division of Forest, Land, and Water Management is planning to make a State land disposal within the Ketchikan Gateway Borough during fiscal year 1980.

Last year, as you know, we did preliminary work on three possible subdivisions within the Borough. These were at Mud Bay, Saxman and Mountain Point. At this time we plan to follow through with a plat for Mud Bay Since Mountain Point and Saxman are still pending T. A. we do not plan to offer them during fiscal year 1980.

Lot sizes for Mud Bay will be in the 3-5 acre range. We anticipate filing the plat with a notation to the effect that the subdivision is not approved by DEC for on site sewage disposal unless a closed system is used.

The Mud Bay project would be appoximately 265 acres in lot 2, USS 3769. Please advise the Southeast District if you have any comments regarding this project.

Sincerely,

Henry Lee Hall, Manager
Southeastern Land District

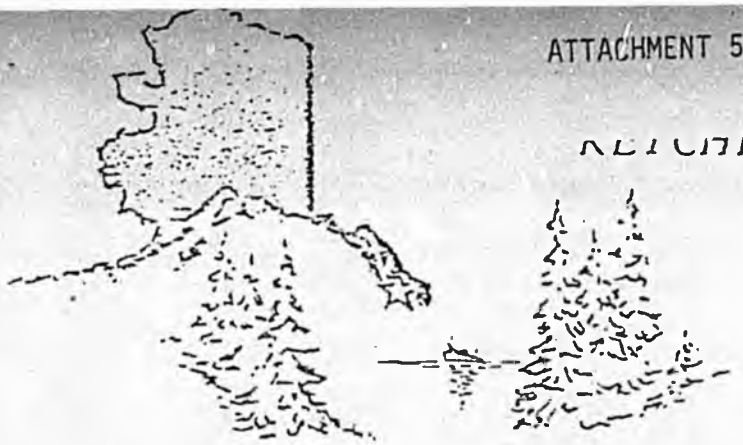
by: Andy Pekovich
District Lands Officer

cc: Kathy Carssow

BOROUGH
RECEIVED
JUL 11 1979
By L.W.
KETCHIKAN GATEWAY BOROUGH

10-JCLH

ATTACHMENT 5



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

Engineers' report attached; please note last page.

October 22, 1979

Claud M. Hoffman, Director
Division of Technical Services
Alaska Department of Natural Resources
703 W. Northern Lights Blvd.
Anchorage, Alaska 99503

Dear Mr. Hoffman:

I regret that Ketchikan Gateway Borough will not be represented at the upcoming meeting of the Disposal Review Committee scheduled for this Thursday, October 26. Today we received copies of the three alternative conceptual plans developed by Charles Pool and Associates, Inc. for the state subdivision at Mud Bay. I wish to commend Pool and Associates on the quality of the conceptual design presentation and to express my appreciation to their staff for keeping us informed on their progress.

The Planning Department endorses the conceptual subdivision design labeled Alternative 2 showing clustered lots which vary in size from one-half acre to 30,000 square feet. Alternative 2 incorporates three important subdivision and land disposal objectives. First, this design concept minimizes the cost of road, sewer, and water service to be borne by the land recipient. This is achieved by: (1) maximizing the number of property owners to be served per facility extension; (2) minimizing the land area to be covered by improvements; and (3) taking advantage of the natural terrain in locating roads and gravity flow sewage collectors. Second, the cluster design allows for a rural, sparsely populated settlement pattern by concentrating development on lands most suited for residential use while leaving unsuitable steep, wet, and muskeg soils as well as streamways as open space. And lastly, Alternative 2 allows for a controlled level of resubdivision to occur in the future in an orderly and cost effective manner.

In contrast, Alternatives 1 and 3 compound development costs for the land recipient and encourage extensive, haphazard resubdivision. Use of either of these two designs is likely to result in the need for numerous short, deadend roads, sewer, and water extensions to accommodate resubdivided lots. These not only will be costly to construct but also to operate and maintain.

Although we realize that Alternative 2 requires further refinement, the concepts underlying this preliminary design are sound. Prior to work beginning on the final subdivision design, we would like to confer with either your staff or Pool and Associates on specific concerns we have relating to lot layout and road access along with recommendations the Planning and Zoning Commission may have.

Due to time constraints, the Commission did not have an opportunity to review this material. We will include consideration of the three subdivision design alternatives on the agenda for the Commission's next meeting scheduled for October 30. I would appreciate your advising me of any further developments occurring between now and then.

Thank you for affording us this opportunity to comment on the conceptual design alternatives for the Mud Bay subdivision. Please feel free to include me in a conference call this Thursday if you or members of the committee wish further explanation of the department's comments. We look forward to a continued cooperative working relationship with your staff and Pool and Associates in finalizing plans for the Mud Bay subdivision.

Respectfully,

Kathryn L. Carssow

Kathryn L. Carssow
Planning Director

cc: Planning & Zoning Commission
Charles Pool & Associates, Inc.

KLC:lw

CHARLES POOL & ASSOCIATES, INC.
CONSULTING ENGINEERS & SURVEYORS
1225 Tongass Avenue
Ketchikan, Alaska 99901



(907) 225-6526

October 22, 1979

Mr. Claude Hoffman
Acting Director
Division of Technical Services
Department of Natural Resources
State of Alaska
703 West Northern Lights Blvd.
Anchorage, Alaska 99503

RE: Mud Bay GSC 189

Dear Mr. Hoffman:

Enclosed are six (6) copies of each of the three (3) Master Plan Alternatives. These alternatives are purely conceptual, and are intended only to give a general overview of the relationship between the various elements of the proposed subdivision.

The road system, as depicted on these alternatives, is based on field investigation by our road location engineer. This was necessary due to apparent discrepancies between the property boundaries and contour lines, and the lack of drainage information on the aerial survey plat compiled by Tryck, Nyman and Hayes.

Alternative I assumes a low density large lot approach, with the 38 created lots being between 2 1/2 and 5 acres. This approach places the maximum acreage in private ownership, and has the least extensive road system requiring only about 2 1/2 miles. However, it makes little provision for green belts, and is subject to multiple resubdivisions. Due to the topography and drainage patterns, it was necessary to form some odd shaped lots.

Alternative 2 is a high density approach creating 134 lots. The lots in this alternative range between 1/2 and 2/3 of an acre, and require a 3-mile road system to connect them. The intent in this approach is to cluster the development thereby maximizing the green belts and general public use areas. This configuration is more conducive to the future development of centralized sewer and water systems.

Alternative 3 is a blend of 1 and 2 establishing 81 lots in the 1 to 3 acre range, and requiring a 3.1 mile long road system. Although some of these lots encompass areas which are not ideally suited for development, an attempt was made to place the majority of these areas into green belts.

During our field investigation, no major slide areas were noted. We did, however, find most of the soils to be poorly drained and the water table to be high throughout the majority of the area. About two-thirds of the developable area drains into the Mud Bight Basin, and the remaining one-third drains into the Refuge Cove and South Sunset Drive area. D.E.C. has stated that this area is unsuitable for on-site disposal of sewage and waste water. The development of this area will, therefore, require the formulation of a Local Improvement District (L.I.D.). The only economically feasible way of accomplishing this task is to increase the density thereby bringing the cost of these improvements within reach. Alternative 2 is designed to facilitate this end, as it clusters the development, and the road system is laid out to maximize the use of gravity sewers where possible. We feel strong consideration should be given to this alternative.

If you have any questions or need additional information, please contact our office.

Very truly yours,

CHARLES POOL & ASSOCIATES, INC.

Don Fordney

By: Donald P. Fordney

DPF:fr
Enc.
cc Ketchikan Gateway Borough

Alaska State Legislature

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE
Don Bennett, Chairman
M. "Ed" Dankworth
George Hohman

HOUSE OF REPRESENTATIVES
Oral E. Freeman, Vice-Chairman
M.F. "Mike" Beirne
Charlie Parr

TO: ALL MEMBERS OF ARRC

DATE: February 12, 1980

FROM: Don Bennett, Chairman

SUBJECT: Agenda for ARRC meeting

These subjects will be discussed at the Administrative Regulation Review Committee meeting scheduled for tomorrow, February 13, 11:30 in the Beltz Room:

1) new proposed mining regulations
2) new proposed fire regulations
3) handtrolling regulations
4) timber sales

See Attachments

January 31, 1980

Mr. Donald J. May
4545 Wood River Drive
Fairbanks, Alaska 99701

Dear Mr. May:

Thank you for your letter and attached information of January 16, regarding the newly proposed mining regulations.

After reviewing your testimony which you presented at the Natural Resources Public hearing, I can certainly understand your concerns. As a person who has been involved in mining in the past, I share your dismay over the restrictions that these regulations would impose on the mining industry. Rest assured, that I will look into the regulations which you cited and see if something can be done to modify them.

Mr. May, I thank you for bringing this matter to my attention, and will do whatever I can to assist you. Please contact me if I can be of further assistance to you.

Sincerely,

Don Bennett

Polar Construction and Mining
4545 WOOD RIVER DRIVE
FAIRBANKS, ALASKA 99701

1/16/80

HON. STATE SENATOR JON BENNET:
JUNEAU, ALASKA

DEAR SIR:

PLEASE TAKE A MINUTE, CONSIDER THIS TESTIMONY GIVEN TO MR. TED SMITH AT THE PUBLIC HEARING IN FAIRBANKS LAST NIGHT.

MIGHT YOUR TIME SERVING US IN JUNEAU BE PROSPEROUS AND PROGRESSIVE THIS YEAR.

THANK YOU VERY MUCH.

RESPECTFULLY YOURS.

Donald D Mang

ALASKA MINERS ASSOCIATION, INC.

FAIRBANKS BRANCH

PRESIDENT
Dr.Richard Swainbank
Box 81315
Fairbanks. Alaska 99701

VICE PRESIDENT
Donald J. May
4545 Woodriver Dr.
Fairbanks , Alaska 99701

SECRETARY
Fred Heflinger
409 Clara St
Faitbanks, Alaska 99701

TREASURER
Donald R. Stein
105 Dunbar Av.
Fairbanks , Alaska

January 15, 1980

State of Alaska
Department of Natural Resources
Public Hearing
Fairbanks, Alaska
c/o Mr. Ted Smith, Director

Dear Mr. Smith:

As Vice Chairman of the Alaska Miners' Association, I have been asked to be a spokesman pertaining to the new proposed regulations which confront us tonight.

First: It's strange indeed that you choose to push regulations upon us with such short notice, in the middle of the winter, with less than a month's notice to defend our life's work and investments which can and could be wiped out with such broad and sweeping powers, that you now as our civil servants possess. Are you fearful to appear directly to the Miners' Association to reason why such changes are necessary? Not one of us on the executive board was informed of such changes pertaining to the mining industry which confront us tonight. These hearings were listed and broadcast this past week locally, for this one night here in Fairbanks under "Forest Resources and Practices" when actually by accident we found out that they were covering proposed mining and mineral resource recovery and development regulations. They deal directly with land use permits which are so restrictive that they even monitor the placement of mechanical equipment, as well as the use of explosives which are under your jurisdiction and authority. Are we

not free to choose what we should and need to use as we see fit without stopping the operation and coming to town?

In many cases this would involve traveling many hundreds of miles to obtain a restrictive permit. This is neither prudent nor progressive, but rather it could be labeled authoritarianism, socialism, or the opposite of free enterprise.

Without getting too involved in all these proposed draft regulations, I would like to consider page 2, Section 11 AAC 65.030. I ask you in all honesty, how can a miner not "cause disturbance or harm to the land or related natural resources"? Who is to say? What one director says can be ignored by a successor, or made more harsh by another. Mining must disturb the land to be effective. This is only common sense. Now if we had the time, we could go further and elaborate on "occupying a cabin, moving or operating equipment, bonding, reporting requirements," or Section 11 AAC 65,210 regarding "Duration," which is so broad and elusive that a director could interpret it to mean a miner or mining company has only 10 years to work a claim. In actuality, most large mining companies require at least 10 years from discovery to full production. Who is going to fool with such a requirement that limits permit life? Industry just goes elsewhere, and so do the jobs that might be generated. Without the development of our resources, this town

would pass through severe economic reverses. I hope you are aware of the number of foreclosures that are and will continue in the near future in Fairbanks. During the past 12 months there are 5 to 6 thousand fewer people living in the Fairbanks North Star Borough, and that doesn't sound like "sensible, sustained growth" to me as the campaign slogans stated, and it's been over 2 years since the pipeline was completed.

Please allow me to pass on my own forecast for this area, based on 30 years' residency (if that adds any authority to what I say). Fairbanks and Interior Alaska will continue to decline over the next few years, due to the lack of a stable economic base. The bureaucrats will increase from a fat state treasury until the day comes that they have eaten themselves out of these fat jobs. In other words, Prudhoe Bay is forecasted to decline to a third of what it is producing today, and so will state oil revenues by 1985.

If we look to the future with a desire to help this area with a stable economic base, we must rejuvenate mining, the deep hard rock mining holds great potential throughout the interior. These proposed draft regulations will only stall or further hinder this basic industry. The Alaska Miners' Association goes on record as completely being in disagreement and in opposition to these oppressive rules which are only the desire of a small percentage of the populace, and if enacted will curtail the small miner businessman now, and stall the large potential mines later.

I hope you gentlemen who have the present, yet temporary position of mandating regulations realize that when the pendulum swings back to a more informed and knowledgeable electorate than appears to be the case here tonight because of some unknown haste, I dare say this electorate will register complete contempt at the polls for such stifling treatment as the proposed regulations.

Sincerely yours,

Donald J. May
4545 Wood River Drive
Fairbanks, Alaska 99701

xc: Honorable Governor Jay Hammond
Honorable Lt. Governor Terry Miller
State Senators and State Representatives
Fairbanks Daily News-Miner
All Alaska Weekly

STATE OF ALASKA / JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT / 323 E. 4TH AVENUE ANCHORAGE, ALASKA 99501

December 12, 1979

Dear Alaskan:

Attached are draft regulations on which the Department of Natural Resources will hold public hearings in January in Ketchikan, Juneau, Anchorage, and Fairbanks. (See the enclosed "Notice of Proposed Changes in the Regulations of the Department of Natural Resources" for hearing details.) The department is interested in your suggestions concerning these proposed regulations. You are invited to present a statement, oral or written, at one of the hearings, or to send it directly to the Division of Forest, Land and Water Management. If your statement is mailed, it should reach us no later than January 25, 1980 in order to be considered.

The first set of regulations deals with a new, general-purpose permit for the use of state land. The Division of Forest, Land and Water Management has, over the years, developed many specialized permits: tideland permits, special land use permits, miscellaneous land use permits, right-of-way permits, trapping cabin permits, personal use permits, etc. And recently two more special-purpose permits were suggested. First, a new law was passed that authorizes livestock grazing "under a permit system," rather than requiring a lease as has been the case in the past. Second, the Department of Fish and Game requested that this department issue five-year permits to the owners of duck shacks built within state game refuges. But instead of creating additional specialized permits to add to an already lengthy list, it was decided to repeal all the other land use permits and replace them with a single, general-utility permit that could be issued with conditions and stipulations tailored to the particular situation.

The new permit system promises to be more efficient both to administer and to obtain. The number of necessary forms will be reduced to a minimum. Furthermore, it will be possible to authorize most projects under a single permit, rather than requiring several different kinds. Thus a trapper who needs two trapping cabins as well as summer pasture for his packhorse, or a seismic surveying team that will be working on both tidelands and uplands and also needs a place to store heavy equipment, will be spared the chore of getting two or three extra permits before they can use state land.

The second chapter of draft regulations covers the sale of state-owned timber and materials (sand, gravel, stone, peat, etc.) and is planned to replace the existing 11 AAC 76, most of which had not been amended since 1962. The new chapter reflects current sale practices and the statutory changes that have taken place in the last 17 years.

One of its most innovative features is 11 AAC 71.020, which implements the authority in AS 38.05.115(a) to make small negotiated sales of timber or materials "without advertisement." The division plans to choose areas from which small sales of gravel or timber (firewood or cabin logs, for example) could be made, notify local governments and the general public of the total amount to be made available for sale from the area over a six- or twelve-month period, and then proceed to sell the logs or gravel "over the counter" without giving additional

notice of each individual sale. This advance notice procedure should serve two purposes. First, local governments entitled to notice of the disposal under Alaska land law will be better able to gauge its cumulative impact, rather than having to assess it on a piecemeal basis as a series of minor sales. Second, a person wanting to buy firewood or enough gravel for a driveway will not have to wait while separate notice of his proposed purchase is given (by law, such notice involves multiple newspaper and radio advertisements over a 45-day period, and often costs far more than the individual timber or material sale is worth).

A section that should be of particular interest is 11 AAC 71.210, concerning "primary manufacture" (initial processing) of logs in Alaska before they are exported. In the past primary manufacture was required in most state timber sale contracts in an attempt to increase Alaska employment. Sometimes, however, the requirement resulted in the opposite effect: it made the sale uneconomic, no bids were received, and jobs that would have been created in logging and shipping the timber were lost. Thus current policy calls for a decision to be made on a case-by-case basis whether to require primary manufacture in a particular sale. The regulation lists the criteria that must be considered when this important decision is made.

Relatively few changes are proposed for Article 4 of 11 AAC 71 because this article, which deals with licenses to salvage abandoned or unbranded logs stranded on state tidelands, was adopted quite recently. These licenses will now be granted either on a first-come, first-served basis or by lottery. The limit on the amount of timber to be included in each license area is being repealed to conform to a recent amendment in the law governing negotiated sales. The law was changed because the purpose behind salvage sales is to clear Alaska's beaches of abandoned logs that become a critical hazard to navigation after every storm. Thus the salvage effort should remove as many logs as possible, regardless of whether the amount recovered exceeds the limit applicable to other negotiated timber sales.

The last chapter of draft regulations is 11 AAC 95, Forest Resources and Practices. Unlike the other two chapters, this one applies not only to state-owned land but to forests owned by cities, boroughs, and private citizens. The first article implements the Forest Resources and Practices Act (AS 41.17), which went into effect Jan. 1, 1979. The law was designed to control logging-caused water pollution, fire and flood hazards, and the spread of forest diseases and insect pests. In addition, it encourages prompt reforestation of harvested areas. The draft regulations establish basic standards to carry out the intent of the legislation, although they leave the logger free to decide how to meet those standards. He can use methods set out in "best management practices" manuals developed jointly by this department and the Department of Environmental Conservation, but may also design new methods that could be more effective in his particular sale area.

Much of the second article is simply re-numbered without amendment from 11 AAC 92, burning permit regulations that have been in effect since 1972. But the remainder of that article is new. It requires that machinery operated on forest land (for logging, agricultural clearing, road-building, etc.) be equipped to reduce fire hazard and that work crews have firefighting tools readily available. Such requirements have not been necessary in the past, when forest operations generally involved logging in southeast Alaska, where fire danger is low. But with the increase in agricultural land clearing, especially in areas of the state where summer weather is hot, dry, and windy, equipment-caused fires have suddenly become a problem. (For example, the Delta fire in the summer of 1979, which cost $4 million and burned 38,000 acres, was caused by sparks from land-clearing machinery.)

The third article deals with the procedure for registering a log brand. Under state law, any log rafted or towed in Alaska waters must be branded, so that its ownership can be established if the raft breaks up.

Your oral or written testimony on these draft regulations will be most useful to the department if it refers to particular sections by number (for instance, 11 AAC 71.305(a), rather than a page number), and if it suggests specific wording changes or other modifications you feel would result in improvement.

Sincerely,

Theodore G. Smith

THEODORE G. SMITH
Director

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

323 E. 4TH AVENUE
ANCHORAGE, ALASKA 99501

NOTICE OF PROPOSED CHANGES IN THE REGULATIONS OF
THE DEPARTMENT OF NATURAL RESOURCES

Notice is hereby given that the Department of Natural Resources, under authority vested by AS 38.05.020, AS 41.17.020, and AS 41.17.080, proposes to adopt, amend, and repeal regulations in Title 11 of the Alaska Administrative Code to implement AS 16.20.038, AS 38.05.115, AS 38.05.330, AS 38.95.080, AS 41.15, AS 41.17, and AS 45.15.315, as follows:

A new chapter, 11 AAC 65, Land Use Permits, is adopted to set the application procedure and terms of a general non-preference-right permit to use the surface of state-owned land for transportation, temporary buildings, storage, trapping cabins, existing shelters in state game refuges, grazing livestock, and similar uses. This permit replaces several other limited-purpose permits the department has used in the past, and the regulations on those limited-purpose permits are repealed: 11 AAC 58.200-.210, 11 AAC 62.720-.790, 11 AAC 62.820-.830, 11 AAC 76.540, 11 AAC 86.600, 11 AAC 94, and 11 AAC 96.

11 AAC 76, Timber and Material Sales, is repealed, and a new chapter, 11 AAC 71, is adopted to replace it. It covers the procedures and contract stipulations for the negotiated or competitive sale of state-owned materials (gravel, stone, etc.) and timber, including abandoned or unbranded logs found in state waters or tidelands. It specifies bid deposits, contract provisions, appraisal and reappraisal, performance bonding, and operating requirements, and sets out criteria for the decision whether to require primary processing of logs in Alaska before they are exported.

A new chapter, 11 AAC 95, Forest Resources and Practices, is adopted. It applies to all forested land, including land owned by municipalities and private citizens. Article 1, Forest Practices, implements AS 41.17. It sets standards loggers must meet to protect water quality, reduce fire and flood danger, control insect infestations and tree diseases, and help ensure reforestation. Except on state land, operators must notify the department before beginning logging, and all operations are subject to inspection.

Article 2, Forest Fire Protection, incorporates regulations on burning permits and fire season closures currently in effect as 11 AAC 92. It also requires that all operators in or near forest land equip their machinery to lessen fire danger, post a watchman, and have fire-fighting tools available for their crews.

Article 3, Log Brands, sets the procedure for registering a log brand, which is required before rafting or towing logs in state waters.

Article 4 covers definitions for the chapter.

Notice is also given that any person interested may present oral or written statements or arguments relevant to the action proposed at hearings to be held at Room 207, State Office Building, Ketchikan, at 7:30 p.m., January 7, 1980; the Juneau-Douglas High School Cafeteria,

Alaska State Legislature

Senate

Committee on Finance

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

February 6, 1980

The Honorable Robert LeResche
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner LeResche:

Enclosed is a copy of a letter from Senator Don Bennett, Chairman of the Regulation Review Committee, regarding proposed fire season regulations. I agree with the position Senator Bennett has taken in his letter. It would appear that the Department is being over zealous in drafting these regulations.

I understand that public hearings on this issue may have been minimal and I believe from reading my mail that the public has much to say on this subject.

I would urge you to postpone adoption of these regulations until you have reviewed adequate input from the public and until the Regulation Review Committee has an opportunity to take a position on them.

Sincerely,

John C. Sackett
Chairman
Senate Finance Committee

cc: ✓ Senator Don Bennett

February 4, 1980

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Following is a summary of the new fire season regulations. The equipment listed is required on the operation site for use in fire fighting during the fire season.

* A tank truck with a power water pump or trailer with a water tank
* Engines equipped with spark arresters on or within 1/8 mi. of forested land
  (1) exempt are full turbocharged internal combustion engines in good cond.
  (2) gasoline and diesel engines operating on public roads
* For stationary engines:
  (a) self propelled tanker or portable trailer
  (b) pond, stream, tank or sump with water storage
      water pump, hose, water supply
* For each individual on the operation site, tool boxes, axes, shovels and pulaskis
* Internal combustion engines equipped with 1 chemical fire extinguisher
* Each truck driven thru forested land except state highway, equip. with shovel, ax, chemical fire extinguisher.
* On cable logging operation:
  (1) clear flammable debris with 10-ft. radius of site
  (2) provide and maintain serviceable 5-gallon pump
  (3) have shovel
* Watchman required - 1 to handle fire equip. and on duty 3 hours after operation shutdown, have communication and transportation facilities.
* Portable power saws must be equipped with spark arresting device
* For saws have fire extinguisher and shovel

The Commissioner may in writing modify requirements if it so warrants.
Equipment must pass set standards.
The regulations are still in draft and there will be a hearing in Juneau, Feb. 6th.

January 28, 1980

The Honorable Robert LeResche
Commissioner
Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Dear Commissioner LeResche:

This is in regards to recent numerous complaints and apprehensions which I have received from many of my constituents regarding the new fire season regulations now being promulgated by the Department.

Much of the input I have received from the Interior Region of the State concerns the enactment of these regulations without adequate public hearing for those individuals who will directly be affected by these new restrictions. An additional concern lies with the feeling that the Administration is not adequately considering the Alaskan lifestyle by the adoption of these regulations.

My own feeling is that the new fire season regulations are perhaps an overzealous "knee-jerk" reaction to last summer's Delta fire situation. Hopefully your Department and the Governor are not inadvertently rejecting the long-standing traditions and practices of the Alaskan life-style by placing these somewhat overbearing restrictions on many Alaskan residents. Further, it would seem that the old regulations are adequate to control fire hazards related to factors outside natural causes. For speaking from my area of the State, in that many summer fires in the Interior are sparked by lightening, I can see no regulation of any kind that can prevent fires of this nature from occurring.

Please know that I feel there is a need for some regulation to control fire hazards, but to burden Alaskan residents with additional restrictions within their daily lives seems contrary to the lifestyle we have attempted to promote.

In closing, I would appreciate receiving your comments and justifications regarding the new fire season regulations. Thank you for your assistance.

Sincerely,

Senator Don Bennett

cc: The Honorable Jay S. Hammond
Ted Smith, Director
Division of Forest, Land & Water
Management

CHAPTER 95. FOREST RESOURCES AND PRACTICES.

Article
1. Forest Practices (11 AAC 95.010-11 AAC 95.160)
2. Forest Fire Protection (11 AAC 95.400-11 AAC 95.530)
3. Log Brands (11 AAC 95.700-11 AAC 95.790)
4. Definitions (11 AAC 95.900)

ARTICLE 1. FOREST PRACTICES.

Section
10. Purpose
20. Applicability
30. Notification
40. Inspections
50. Best management practices
60. Waivers
70. Designation of regions
80. Road construction and maintenance
90. Harvesting
100. Cleanup and stabilization
110. Wildlife considerations
120. Aesthetics
130. Log transfer and storage facilities
140. Slash
150. Reforestation
160. Insect and disease prevention and control

11 AAC 95.010. PURPOSE. The purpose of this chapter is to establish minimum standards for forest practices that will provide the maximum practical protection to maintain forest productivity, water quality, and fish and wildlife habitat. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.020. APPLICABILITY. (a) Non-commercial operations and commercial operations 10 acres in size or less, on municipal and private forest land, are not subject to the notification procedure of AS 41.17.090 or to sec. 30 of this chapter.

(b) Commercial operations greater than 10 acres in size on municipal and private forest land are subject to AS 41.17.090 and to all the requirements of this chapter.

(c) All non-commercial and commercial operations on state forest land are subject to all the requirements of this chapter except sec. 30 and AS 41.17.090. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.050
AS 41.17.080

11 AAC 95.030. NOTIFICATION. (a) At least 30 days before commencing an operation on forest land, the operator shall give notice to the state forester, on forms 10-1033 and 10-1034 supplied by the state, of his intent to operate.

(b) Notifications may be mailed or delivered in person to any of the district or area offices of the division. They will be accepted only for those portions of the operation which the applicant states will be completed by December 31 of the year following the year in which the notification is made. If the operation continues, notification must be renewed to reflect changes and/or additions to the operation. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080
AS 41.17.090
AS 41.17.120

11 AAC 95.040. INSPECTIONS. (a) State personnel shall notify the operator or his representative of a pending inspection, and shall encourage and give him the opportunity to accompany the state personnel during the inspection.

(b) A written forest operation inspection report will be prepared by the forest practices forester after each inspection and will be distributed to the operator, landowner and timber owner.

(c) If the inspection reveals that damage has occurred or is occurring, such damage is prima facie evidence of a violation of this chapter or of AS 41.17. (Eff. / /80, Register).

Authority: AS 41.17.020
AS 41.17.030
AS 41.17.120

11 AAC 95.050. BEST MANAGEMENT PRACTICES. (a) To meet the standards of secs. 80-100 and 130 of this chapter, an operator may use either the practices set out in the manual of best management practices, or alternatives of his own choosing. Approval of the forest practices forester is recommended but is not required before using alternative practices.

(b) Conformance with the practices set out in the manual of best management practices, or with alternatives that have been approved by the forest practices forester in writing is a positive defense against prosecution under AS 46.03.790. Approval of the forest practices forester must be based, after consultation with the Department of Environmental Conservation and the Department of Fish and Game, on a finding that the alternative practice is at least as likely to meet the standards as the practice set out in the manual.

(c) The manual of best management practices is available at any of the district or area offices of the division. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.060. WAIVERS. (a) The state forester may grant a written waiver of the requirements of this chapter subsequent to a finding that in a specific circumstance or situation:

(1) no substantial benefit in the protection of water quality, aquatic or terrestrial habitat, or other purposes of AS 41.17 will be achieved; or

(2) strict compliance would not be feasible or prudent.

(b) The state forester will act within 30 days in processing a request for a waiver.

(c) Nothing in this section may be construed to give the state forester authority to supersede or grant variances from the provision of laws or regulations administered by other state agencies, unless such authority has been delegated to him by the agency.

(d) The state forester shall consult with the Department of Environmental Conservation, the Department of Fish and Game, and the operator regarding areas of their concern before approving requests for waivers. He may attach such special requirements, conditions, and stipulations as he deems necessary to protect water quality and aquatic and terrestrial habitat, or to carry out the purposes of this chapter. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.070. DESIGNATION OF REGIONS. For the purposes of this chapter, the state is divided into regions as follows:

(1) Region I (Coastal Sitka spruce/hemlock region). Forest land from the southern boundary to Cook Inlet and Kodiak Island con-

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taining the following tree species: Sitka spruce, western hemlock, mountain hemlock, Alaska cedar, red alder, black cottonwood, western redcedar, and lodgepole pine.

(2) Region II (Interior spruce/hardwood region). Forest land extending from the Kenai Peninsula to the south slopes of the Brooks Range and westward nearly to the Bering Sea containing the following tree species: white spruce, paper birch, balsam poplar, quaking aspen, black spruce, tamarack, and black cottonwood. The portion of Region II lying north of the Alaska Range is designated IIa; the portion lying south of the Alaska Range is designated IIb. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.080. ROAD CONSTRUCTION AND MAINTENANCE. (a) For all operations on state land, a detailed transportation plan must be developed, recognizing the long-range transportation needs of the area with regard to forest management and associated uses, before commencing road building operations. This plan must be revised and updated at five-year intervals unless circumstances indicate more frequent revisions.

(b) To the extent feasible for operations on all land, roads must be located to:

(1) minimize the risk of material entering surface waters;

(2) minimize the number of stream crossings;

(3) minimize alteration of natural features including topography and drainage;

(4) avoid unstable areas; and

(5) maintain the filtering effect of natural vegetative cover between road and water.

(c) No change may be made in natural stream courses or channels except with the written approval of the Department of Fish and Game under AS 16.05.870 or, for waters not identified under AS 16.05.870 by the state forester.

(d) Road design standards and specifications must be adapted to the terrain and soil materials in order to minimize surface disturbance and to minimize impact on water quality to the extent feasible and prudent.

(e) Water crossing structures must provide for free passage and movement of fish, as required by the Department of Fish and Game, and minimum impact on water quality; structures for permanent roads must also accommodate anticipated streamflow and passage of upstream debris.

(f) Water crossing structures must be installed in a manner to minimize disturbance of streambed or streambank, erosion, or other adverse impacts on water quality; and at a time of year that minimizes interference with spawning or migration of anadromous fish, as required by the Department of Fish and Game.

(g) Construction equipment and machinery may not be operated in or through surface water except as approved by the Department of Fish and Game under AS 16.05.870 or by the state forester for waters not under AS 16.05.870.

(h) All areas of exposed soil must be stabilized to the extent feasible at the normal angle of repose or less, to minimize soil erosion and subsequent siltation of surface waters.

(i) Vegetative debris must be removed from surface waters within 48 hours of its deposition to avoid toxic leaching or obstruction of streamflow.

(j) Rock, overburden, and other materials associated with road construction must be placed to minimize the possibility of their entry into surface waters.

(k) No solid waste or petroleum product may be allowed to enter surface waters.

(l) All drainage features and structures such as ditches, cross drains, crowning, outsloping, culverts and bridges must be maintained to prevent blockage and erosion during periods that the road is in use, or removed and stabilized once the road has been abandoned or its use otherwise terminated.

(m) No quarry or borrow site may be located in active stream beds or within the twenty-five year floodplain except as may be approved by the Department of Fish and Game under AS 16.05.870, by the Department of Natural Resources under AS 38.05.330, or by the state forester for land and water not subject to AS 16.05.870 or AS 38.05.330.

(n) Upon abandonment of the quarry or borrow site as a source of material, the banks, headwall, and other exposed surfaces of the site must be stabilized to the extent necessary to prevent soil erosion or mass soil movement and must be self-drained. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.090. HARVESTING. (a) For all operations on state land, a detailed harvesting plan must be developed, recognizing the other forest resources and the extent to which these other resources will be impacted by the harvesting activities.

(b) On all land, felling, bucking, and yarding must be conducted so as to:

(1) avoid the deposition of vegetative material in surface waters to the extent feasible and prudent;

(2) maintain the integrity of the streambank and its vegetative cover; and

(3) minimize soil erosion from the cutover area.

(c) Landings, skid trails and fire trails must be located, constructed, and maintained so as to minimize siltation of surface waters. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.060

11 AAC 95.100. CLEANUP AND STABILIZATION. (a) Waste materials resulting from road construction and harvesting activities such as, but not limited to, crankcase oil, fuel, grease, filters, hydraulic fluid, and their containers, must be disposed of in accordance with the provisions of 18 AAC 60.

(b) Machine parts, wire rope, and similar scrap wastes must be disposed of in a stable location where there is no realistic potential for their entering surface waters.

(c) Drainage systems must be provided and maintained to control the dispersal of runoff water from exposed soils on landings, skid trails, fire trails and other unstable or erodible areas to minimize soil erosion and subsequent siltation of surface waters.

(d) Unstable or erodible exposed soils must be stabilized by seeding, mulching, or other suitable means to prevent siltation of surface waters. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.060

11 AAC 95.110. FISH AND WILDLIFE CONSIDERATIONS. On state and municipal land:

(1) harvesting plans must identify and operations must protect species and their habitats identified as being threatened or endangered; and

(2) a buffer 330 feet in radius must be retained around each active bald eagle nesting tree. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.060

11 AAC 95.120. AESTHETICS. Where major scenic attractions, highways, recreation areas, or other high use areas are located on state or municipal forest land, special consideration must be given to scenic values by the layout and design of cutting units to minimize visual impact and by prompt cleanup and regeneration after harvesting. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.130. LOG TRANSFER AND STORAGE FACILITIES. (a) Sites for in-water dumping and storage of logs must be selected so as to reduce to acceptable limits the area adversely affected.

(b) Sites within 300 feet of the mouths of anadromous waters or in areas known to be important for fish spawning or rearing must be avoided where practical alternatives exist. (Eff / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.140. SLASH. (a) In those areas where slash treatment is necessary to prevent or reduce the spread of fire, accumulations of slash must be reduced by scattering, piling or windrowing, mechanized chipping, compacting, burying, or controlled burning.

(b) When slash is to be disposed of by burning, vegetative buffers must be protected from fire, and the burning must be accomplished under conditions of weather that will minimize air quality degradation.

(c) Unstable slash accumulations around landings must be disposed of or dispersed to prevent their entry into streams and other waterbodies.

(d) Within Region II mulations of slash must be treated by burning, burying, or some other method to destroy developing insects and prevent bark beetle buildup in white spruce. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

11 AAC 95.150. REFORESTATION. (a) On state and municipal land, trees that are to be left for future harvest must be adequately protected from damage resulting from harvest operations to assure their survival and growth.

(b) On all land, management strategies must be designed to assure adequate natural or artificial reforestation of acceptable species on all harvested land that is economically suited for the growing and harvesting of commercial timber within:

(1) five years in Region I;

(2) ten years in Region IIa; and

(3) seven years in Region IIb.

(c) On all land where artificial reforestation has been selected as the management option and suitable seedlings or seeds from appropriate seed source zones are unavailable, or if weather conditions or other circumstances beyond the landowner's control require delay in planting or seeding, a reasonable extension of time will be allowed.

(d) On all land, planted seedlings must survive two winters on the site before they can be considered adequate for reforestation. (Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.060

11 AAC 95.160. INSECT AND DISEASE PREVENTION AND CONTROL. (a) When the commissioner finds forest land or timber that is infested by forest insect pests, infected by forest tree diseases, or threatened by insect pests or forest tree diseases, he will determine whether measures of control are necessary and available and to which areas the control measures should be applied. Thereafter, the commissioner may designate a disease or insect control area with definite boundaries. The area may include threatened forest land or timber as well as forest land or timber already affected.

(b) The commissioner will immediately notify in writing all owners of forest land or timber within the designated control areas. The notice may be served by delivery of a copy of the notice to the owner, or by mail addressed to his last known place of address. In addition, the commissioner will publish a legal description of the designated control area at least once a week for two consecutive weeks in one or more newspapers of general circulation in or near the designated control area.

(c) The commissioner will assist the owners of forest land or timber within the designated control area with the control and salvage measures necessary, to the extent that there is available funding for undertaking such measures.

(d) When the commissioner determines that forest insect pest or forest tree disease control work within the designated control area is no longer necessary or feasible, the commissioner may terminate the designation.

(e) Every owner of forest land or timber shall conduct operations so as to minimize forest insect pest and forest tree disease depredations to the extent feasible and prudent.

(f) Silvicultural systems employed on state and municipal land must be designed to prevent and/or control insect infestations and disease infection.

(g) Mortality caused by insects and diseases on state and municipal land must be salvaged as rapidly as is practicable, dependent upon access and marketability, to prevent undue loss of the resource.
Eff. / /80, Register)

Authority: AS 41.17.020
AS 41.17.080

*ARTICLE 2. FOREST FIRE PROTECTION.

'72 (400. Permit
410. Content of permit
420. Refusal, suspension or revocation of permit
430. Place of burning
440. Emergency closure
450. Public notice
460. Environmental control)
470. Additional equipment for logging operations
480. Spark arresters
490. Water supply and equipment for stationary engines
500. Fire tools and fire extinguishers
510. Watchman service
520. Portable power saws
'72 (530. Other governmental laws

11 AAC 95.400. PERMIT. (a) A burning permit is required during the fire season for the burning of any material in the areas designated by the commissioner. A burning permit is not required when the burning is contained within an approved device or for cooking, warming or signaling fires.

(b) A burning permit may be obtained by applying to a person authorized by the commissioner to issue the permit. The applicant shall provide the authorized person with information as to the type, location, and person in charge of the burning; the area and material to be burned; and the number of persons controlling the burn.

(c) A person issued a burning permit may not burn any material covered by the permit unless he has the permit in his possession. The permit shall be displayed to any authorized person upon request.

* Secs. 400-460 and 530 of this article are renumbered from 11 AAC 92, which went into effect July 2, 1972. They are not proposed to be amended.

(d) Prior to issuing a permit, the authorized person may require that he inspect the area and material to be burned. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020
AS 41.15.020

11 AAC 95.410. CONTENT OF PERMIT. (a) Each permit shall be on a form provided by the Department of Natural Resources and shall contain:

(1) name and address of permittee;

(2) name of the authorized person issuing the permit;

(3) the forest protection area where the burning will be conducted;

(4) the date of issuance and expiration of the permit;

(5) a detailed description of the area where the burning will be conducted, designated by borough, subdivision, section, township, range, meridian, and local landmarks; and

(6) the amount of acres or area to be burned.

(b) Each permit may provide:

(1) a specific time and date for the burn;

(2) the minimum number of persons and equipment employed to control or extinguish the burn; and

(3) limitation as to the size of the burn and the number of burns. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020
AS 41.15.050

11 AAC 95.420. REFUSAL, SUSPENSION, OR REVOCATION OF PERMIT. (a) A burning permit may be refused if the authorized person is not permitted to inspect the area and material to be burned. A permit may be refused, suspended or revoked to protect life and property.

(b) A permit is suspended by an emergency closure to burning in the permit area. If the emergency closure remains in effect past the expiration date of a permit, the permit is revoked and a new permit

shall be obtained before conducting further burning. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020
AS 41.15.050
AS 41.15.060
AS 41.15.090

11 AAC 95.430. PLACE OF BURNING. A permitted burn shall be confined to an area surrounded by mineral soil, gravel or rock or shall be surrounded by a natural or constructed firebreak. (Eff. 2/7/72, Register 42)

Authority: AS 41.15.020
AS 41.15.050
AS 41.15.060
AS 41.15.090

11 AAC 95.440. EMERGENCY CLOSURE. The commissioner may, during the fire season, close an area to setting of fires, burning, smoking, entry or other use of land, when, in his judgment, the activities would unduly increase the fire danger. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020
AS 41.15.020

11 AAC 95.450. PUBLIC NOTICE. An emergency closure is effective upon the publication in a newspaper of general circulation in the area closed of a public notice issued by the commissioner specifying the area closed and the effective date of closure. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020
AS 41.15.050
AS 41.15.060

11 AAC 95.460. ENVIRONMENTAL CONTROL. Any burning authorized by a permit obtained under this chapter shall be conducted in a manner as required by 18 AAC 50, Air Quality Control Regulations, and 18 AAC 60, Solid Waste Regulations. (Eff. 7/2/72, Register 42)

Authority: AS 41.15.020
AS 41.15.050
AS 41.15.060

11 AAC 95.470. ADDITIONAL EQUIPMENT FOR OPERATIONS. (a) On forested land during the fire season, a tank truck or portable trailer with water tank capacity of not less than 300 gallons is required on the operation area. It must be in good mechanical condition and readily available for use in fighting fire.

(b) The tank truck must be properly equipped with a power water pump of sufficient size and capacity to provide a discharge of not less than 20 gallons per minute when pumping through 50 feet of hose equipped with a nozzle one-quarter inch in diameter at pump level.

(c) The pump must be equipped with not less than 500 feet of hose of three-quarter inch inside diameter or larger and a nozzle not less than one-quarter inch in diameter; not less than 250 feet of the hose, and the nozzle, must be maintained as a connected, operating unit ready for immediate use at any time.

(d) The commissioner may, in writing, modify any requirement of this section if he finds that the conditions of the operation so warrant. (Eff. / /80, Register)

Authority: AS 41.15.020

11 AAC 95.480. SPARK ARRESTERS. (a) On or within one-eighth of a mile of forested land during the fire season, engines must be equipped with a spark arrester that meets the standards set forth in the publication of the United States Department of Agriculture, Forest Service, entitled "Standard 5100-1a for Spark Arresters for Internal Combustion Engines," issued March, 1976, except that non-turbocharged railroad locomotives must be equipped with a spark arrester that meets the standards set forth in the publication of the Association of American Railroads Manual of Standards and Recommended Practices, "Standard for Spark Arresters for Non-turbo Charged Diesel Engines Used in Railroad Locomotives," issued March, 1971.

(b) The following are exempt from the requirements of this section:

(1) full turbocharged internal combusion engines maintained in good condition;

(2) gasoline and diesel engines in vehicles operating on public roads.

(c) The commissioner may, in writing, modify or waive any requirement of this section if he finds that conditions so warrant. (Eff. / /80, Register)

Authority: AS 41.15.020

11 AAC 95.490. WATER SUPPLY AND EQUIPMENT FOR STATIONARY ENGINES. (a) On forested land during the fire season, the minimum standards for water supply and equipment for stationary engines are:

(1) water supply:

(A) a self-propelled tanker or portable trailer in operable condition of not less than 300 gallons; or

(B) a pond, stream, tank, or sump with storage of not less than 500 gallons.

(2) Water pump: size and capacity must be such that the pump will provide a discharge of not less than 20 gallons per minute when pumping through 50 feet of hose equipped with a one-quarter inch inside diameter nozzle at pump level.

(3) Hose and nozzle: at least 500 feet of serviceable hose of not less than three-quarter inch inside diameter, and a nozzle with an inside diameter of one-quarter inch.

(b) Water supply, pump, and not less than 250 feet of the hose, and the nozzle, as required by this section, must be maintained as a connected, operating unit ready for immediate use at any time.

(c) The commissioner may, in writing, modify or waive any requirement of this section if he finds that conditions so warrant. (Eff. / /80, Register)

Authority: AS 41.15.020

11 AAC 95.500. FIRE TOOLS AND FIRE EXTINGUISHERS. (a) This section applies on forested land during the fire season.

(b) Every person conducting an operation shall provide at the operation site, or at a location designated by the commissioner, the number of tools and tool boxes required by the following table:

TOOL TABLE

No. of Persons in Operation	1-4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Tool Box	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
Axes	1	1	1	1	1	1	2	2	2	2	2	2	2	2	3	3	3
Shovels	2	2	2	3	3	3	3	4	4	5	5	6	7	7	7	7	8
Pulaskis	1	2	3	3	4	5	5	5	6	6	7	7	7	8	8	9	10

An operation with more than 20 men must use multiples of any of the above columns to arrive at a tool distribution equal to or in excess of the number of men in the operation. The number of tools of each type required by the above table may be varied by notice in writing from the commissioner, when, in his opinion, the nature of the fire hazard requires such adjustment; provided, however, that in no event may the total number of tools required exceed the total number of tools required by the table.

(c) The commissioner may, as an alternative to the requirements of (b) of this section, authorize in writing other tools of a use and purpose equivalent to those designated and required by the tool table to equip the personnel for firefighting at an operation site.

(d) The tool boxes designated in (b) of this section must be kept in good repair and clearly identified as containing firefighting tools. The tools required by (b) and (c) of this section must be serviceable and kept in good repair. Such tools must be kept in the tool box or boxes to be used for firefighting purposes only, and will be sealed by the state.

(e) Each internal combustion engine must be equipped with one chemical fire extinguisher rated by Underwriters' Laboratories as not less than 4-B.C.

(f) Each truck driven on or through forested land except on state highways must be equipped with one round-pointed No. 0 shovel or larger, one pulaski or axe with twenty-six inch handle or larger, and one chemical fire extinguisher rated by Underwriters' Laboratories as not less than 4-B.C.

(g) The fire extinguisher required by (e) and (f) of this section must be placed on each engine or truck, or both, so as to be visible to the operator and ready for instant use. The extinguisher must be equipped with a reliable and easily read pressure gauge.

(h) The operator of a cable logging operation at each block on the yarding road shall comply with the following:

(1) clear all flammable debris from the area within a 10-foot radius of the block. The area must be kept clear of such debris so long as the block is in use;

(2) provide and maintain a serviceable five-gallon pump can filled with water; and

(3) provide and maintain a round-pointed No. 0 shovel or larger.

(i) The commissioner may, in writing, modify or waive any requirements of this section if he finds that conditions so warrant.
(Eff. / /80, Register)

Authority: AS 41.15.020

11 AAC 95.510. WATCHMAN SERVICE. (a) During the fire season every operator conducting an operation on forested land must provide a watchman service of not less than one person physically capable of and experienced in operating the firefighting equipment required for the operation area.

(b) The watchman shall:

(1) be constantly on duty for three hours after the power-driven equipment used by the operator has been shut down for the day;

(2) visually observe all conditions of the operation area on which industrial activity has been in progress; and

(3) have adequate facilities for transportation and communications in order to be able to summon assistance if needed.

(c) After a measurable amount of rain on the operation area, the commissioner may suspend, in writing, the requirement of this section until such time as conditions warrant reinstatement.

(d) The commissioner may, in writing, modify or waive any requirement of this section if he finds that conditions so warrant.
(Eff. / /80, Register)

Authority: AS 41.15.020

11 AAC 95.520. PORTABLE POWER SAWS. (a) During the fire season portable saws powered by internal combustion engines and used by any person on forested land must be constructed and equipped for the prevention of fire as follows.

(1) All saws must be equipped with a spark-arresting device constructed to retain or destroy 90 percent or more of the carbon particles having a major diameter greater than 0.023 inches (0.584 mm). A spark-arresting device equipped with a woven screen with a maximum opening size of 0.023 inches (0.584 mm), constructed of heat- and corrosion-resistant wire at least 0.013 inches (0.330 mm) in diameter, will be considered in compliance with the requirement, provided the total screen opening area is not less than 125 percent of the engine exhaust port area. The unit must be constructed to permit easy removal of the screen for field inspection, replacement, and cleaning.

(2) Portable power saws will be deemed to be in compliance with (1) of this subsection if they are certified by the United States Department of Agriculture, Forest Service, San Dimas Equipment Development Center, to meet the performance specified in the Automotive Engineers publication, "Multiposition Small Engine Exhaust System Fire Ignition Suppression SAE Recommended Practice J335(b)." (See Exhibit "A".)

(b) Any person using a portable saw powered by an internal combustion engine on forested land shall have the following immediately available for the prevention and suppression of fire:

(1) a fire extinguisher of at least eight-ounce capacity as approved by the commissioner; and

(2) a size 0 or larger shovel.

(c) If a power saw is fueled on forested land, the power saw must be moved at least 20 feet from the place of fueling before starting.

(d) The commissioner may, in writing, modify or waive the requirements of this section if he finds that, under conditions of low fire danger, less restrictive requirements are warranted. (Eff. / /80, Register)

Authority: AS 41.15.020

11 AAC 95.530. OTHER GOVERNMENTAL LAWS. A permit issued under sections 400-530 of this chapter is subject to local laws, rules, and regulations which are more restrictive. (Eff. 7/2/72, Reg. 42)

Authority: AS 41.15.050
AS 41.15.060

ARTICLE 2. LOG BRANDS.

Section
700 Log brand
710 Barged logs
720. Brand design
730. Acceptance or rejection of application
740. Cancellation of registration
750. Fees for registration or transfer of registration
760. Reservation of brands
770 Registration upon transfer
780 Use of unregistered brand
790. Notice or demand

11 AAC 95.700. LOG BRAND. In this chapter and in AS 45.50.310-325, the term "brand" means:

(1) a mark or other designation that has been registered with the department; or

(2) an impression stamped on timber property with a branding hammer. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 45.50.315
AS 45.50.325

11 AAC 95.710. BARGED LOGS. Timber property transported by a self-dumping barge will be presumed, upon being loaded on the barge, to be intended to be put in a waterway of the state within the meaning of AS 45.50.230(a). (Eff. / /80, Register)

Authority: AS 38.05.020
AS 45.50.230(a)
AS 45.50.315

11 AAC 95.720. BRAND DESIGN. (a) A diagram or design on paper, within the meaning of AS 45.50.210(b), will be considered acceptable if it is a sketch or drawing with exact dimensions shown, or a paint or ink impression of the brand. The department may request the owner of a brand to furnish a paint or ink impression on paper of the brand at any time in order to confirm that owner's branding hammer conforms to the design of the brand as registered.

(b) The actual size of the brand must be at least two inches in diameter or dimensions. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 45.50.210
AS 45.50.315

11 AAC 95.730. ACCEPTANCE OR REJECTION OF APPLICATION. No application will be accepted unless accompanied by the registration fee and, if requested by the department, an impression of the brand and additional descriptive information. (Eff. / /80, Register)

Authority: AS 45.50.210(b)
AS 45.50.220
AS 45.260
AS 45.50.315

11 AAC 95.740. CANCELLATION OF REGISTRATION. (a) A brand registration may be cancelled by the department, following notice and an opportunity to be heard,

(1) if the owner fails to furnish an impression of the brand or information about the brand or use of the brand when requested by the department;

(2) upon conviction under AS 45.50.320; or

(3) if the applicant or owner fails to reply to a certified or registered letter from the department requesting information concerning the log brand within a specified period of time. The time period may be no less than 15 days from the date the letter is postmarked.

(b) A brand registration may be cancelled by request of its owner. The cancellation will be effective upon receipt by the department of a written notice from the owner requesting the cancellation. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 45.50.210
AS 45.50.315
AS 45.50.320

11 AAC 95.750. FEES FOR REGISTRATION OR TRANSFER OF REGISTRATION. (a) The fee for registration or transfer of a registration is set out in a fee schedule posted in the district offices of the division.

(b) The fee may be forfeited if an application is rejected.

(c) The fee is forfeited if a brand registration is cancelled before to the expiration of the period of registration. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 45.50.210
AS 45.50.220
AS 45.50.260
AS 45.50.280
AS 45.50.315

11 AAC 95.760. RESERVATION OF BRANDS. When an acceptable application has been received for registration or renewal of registration, the brand will be reserved to the applicant. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 45.50.315

11 AAC 95.770. REGISTRATION UPON TRANSFER. No registered brand may be transfered to or used by or on behalf of a third party except after prior written notice to the department, accompanied by a true copy of the instrument of transfer as required by AS 45.50.260, together with the registration fee. Upon receipt and filing for record of a copy of the transfer instrument and the fee, the department will enter the brand and issue a certificate to the new owner. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 45.50.260
AS 45.50.280
AS 45.50.315

11 AAC 95.780. USE OF UNREGISTERED BRAND. Logs branded with an unregistered brand, or with a registered brand used by a person not authorized to use it, will be considered for all purposes to be unbranded. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 38.50.315
AS 38.50.320

11 AAC 95.790. NOTICE OR DEMAND. Any notice or demand under this chapter or under AS 38.50.315 - AS 38.50.320 must be in writing and must be sent by certified or registered mail to the other party at the address of record. Either party may designate in writing a new or other address to which the notice or demand is to be mailed. A written notice or demand is considered delivered when deposited in a U.S. general or branch post office. (Eff. / /80, Register)

Authority: AS 38.05.020
AS 38.50.315
AS 38.50.320

ARTICLE 4. DEFINITIONS

Section
900. Definitions

11 AAC 95.900. DEFINITIONS. In this chapter, unless the context otherwise requires,

(1) "anadromous fish" means those fish spending a portion of their lives in both fresh and salt water;

(2) "anadromous waters" means all rivers, lakes, and streams, or parts of them, that are used for the spawning, rearing, or migration of anadromous fish;

(3) "approved device" includes conventional and portable stoves, fireplaces, and incinerators with adequate safeguards to prevent escapement of fire;

(4) "aquatic and terrestrial habitat" means habitat utilized by fish or wildlife to sustain life;

(5) "borrow site" means an excavation site outside the limits of construction to provide materials necessary to that construction, such as fill material;

(6) "burning" includes setting of fires, and excludes smoking;

(7) "commissioner" means the commissioner of natural resources or his authorized designee;

(8) "cooking, warming, or signaling fire" means a small fire contained within a natural or artificial barrier to prevent its escape, used for cooking, signaling, or warming, and attended at all times;

(9) "crossdrain" means a cross ditch used to move water from one side of a road to the other to prevent accumulation of runoff without the need of a culvert or bridge;

(10) "crowning" means to shape the running surface of a road higher in the center in order to direct runoff to roadside ditches rather than channel it down the centerline;

(11) "display" or "displayed" means readily discernible or situated or placed in a manner on timber property;

(12) "department" means the Department of Natural Resources;

(13) "feasible and prudent" means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technical, and safety factors;

(14) "forest land" in secs. 10-160 of this chapter is as defined by AS 41.17.950(a);

(15) "forested land" in secs. 400-530 of this chapter is as defined by AS 41.15.170(3);

(16) "material" includes any organic or inorganic flammable substance such as trees, brush, weeds, grass, wood, lumber, trash, papers, clothes, tires, and chemicals;

(17) "mineral soil" means a soil containing insufficient organic material to sustain fire;

(18) "normal angle of repose" means the angle at which cut slopes will stand naturally, and varies by type of material;

(19) "operation" in secs. 10-160 of this chapter is as defined by AS 41.17.950(a); in secs. 400-530 of this chapter, "operation" means any industrial activity or any development or improvement of forest land, or within one-eighth of a mile from forest land, including but not limited to the clearing of land or rights-of-way, logging or sawmilling, thinning and pruning;

(20) "outsloping" means to shape the running surface of a road in a manner to carry runoff to the downslope side of the road, and is used for roads without roadside ditches;

(21) "permanent road" means a road constructed to be of use through several cutting entries;

(22) "permit" means burning permit;

(23) "salvage" means the recovery of timber property that is no longer in possession or control of its owner or rightful transporter;

(24) "stabilize" means to make resistant to shifting or erosion by mechanical or other means;

(25) "state forester" means the state forester or his authorized representative;

(26) "surface waters" means streams, creeks, rivers, and ponds and lakes greater than 10 acres in size;

(27) "temporary road" means a road constructed for use for generally not more than two consecutive operating seasons;

(28) "upstream debris" means slash or debris located 50 feet or less upstream from a culvert or bridge that may reasonably be expected to plug the inlet or damage the structure; and

(29) "vegetative buffer" means a strip of varying width containing undisturbed grass, brush or trees, or other natural vegetation acting as a filter for runoff. (Eff. 7/2/72, Register 42; am / /80, Register)

Authority: AS 41.15.050
AS 41.15.060
AS 41.15.090
AS 41.17.020
AS 41.17.080

CHAPTER 92. FOREST PROTECTION. Repealed. (/ /80, Register)

DRAFT

EXHIBIT A(continued)

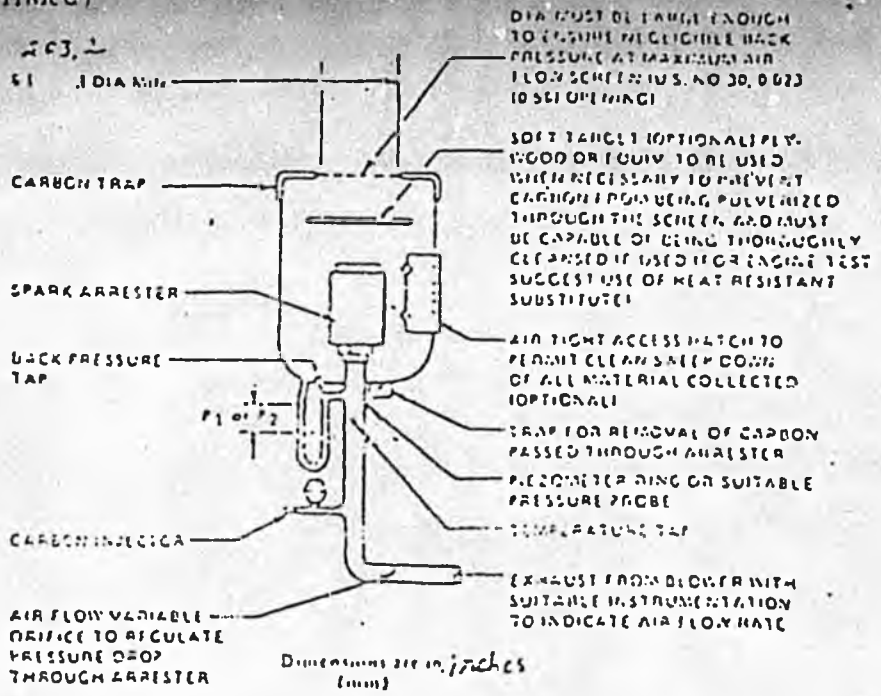


Fig. 1. Test apparatus for measuring spark arrester efficiency.

3.5 Back Pressure and Flow.

3.5.1 Provision shall be made for measuring flow rate through the arrester and differential pressure from intake to discharge of the arrester.

3.5.2 Unless 3.5.3. applies, the spark arrester shall be tested for two conditions: (1) at a constant flow rate at which the initial back pressure (prior to test carbon injection) from intake to discharge is 2 in Hg (6.8 kPa), (2) at a constant flow rate at which the initial back pressure (prior to test carbon injection) from intake to discharge is 1 in Hg (3.4 kPa).

3.5.3 With arresters using a small mesh screen, clogging of the screen may occur before the entire 5 g sample of carbon is injected into the arrester. In these instances, use the following test procedure:

Condition 1 - Initially establish an airflow to cause a pressure differential drop of 2 in Hg (6.8 kPa). Then allow the back pressure differential to build up to 2-1/2 in Hg (8.5 kPa). Once the 2-1/2 in Hg (8.5 kPa) is reached, maintain this pressure for the balance of the test.

Condition 2 - Initially establish an airflow to cause a pressure differential drop of 1 in Hg (3.4 kPa). Then allow the back pressure differential to build up to 1-1/2 in Hg (5.1 kPa). Once the 1-1/2 in Hg (5.1 kPa) is reached, maintain this pressure for the balance of the test.

3.5.4 Establishment of Maximum Flow Capacity. To establish maximum flow capacity, measure the flow rate which occurs when a new arrester is subjected to a pressure differential from intake to discharge of 2 in Hg (6.8 kPa). No test carbon shall be injected for this part of the test. The assigned flow rate shall be one-half the flow rate obtained for the conditions described above.

3.5.5 The flowmeter shall be an accepted design, such as a calibrated orifice. The indicated flow shall be within 5% of actual at the specified flow rate at 2 in Hg (6.8 kPa).

3.6 Injecting Mechanism. The test carbon shall be injected by a feeder mechanism that shall not crush or grind the material nor shall it unduly affect the normal flow of air through the apparatus. It shall be located approximately as shown in Fig. 1. Test carbon shall be injected into the air stream at uniform rate over a period of 15 ± 5 min.

3.7 Carbon Particle Collection. All carbon inside the testing apparatus which has escaped through the spark arrester during each run is to be carefully brushed into the trap and then hand sieved lightly on a U.S. Standard No. 30 (0.023 in (0.584 mm) opening) screen. Weigh the carbon particles retained for determining the arrester's particle retention efficiency.

3.7.1 Determination of Arresting Efficiency. Use the following formula for determining arresting efficiency for either SAE fine or SAE coarse carbon:

$$\% \text{ efficiency} = \frac{\text{Grams used} - \text{Grams of carbon retained on No. 30 U.S. screen (see 3.7)}}{\text{Grams used}} \times 100$$

3.7.2 For combined average effectiveness of SAE fine and SAE coarse particles:

$$\% \text{ efficiency} = \frac{\% \text{ efficiency of SAE fine} + \% \text{ efficiency of SAE coarse}}{2}$$

3.8 Test Position of Spark Arrester. The spark arrester shall be tested in the position where it is judged to be the least efficient. This may be determined by preliminary checks of arresting efficiency in various operating positions.

4. Exposed Surfaces Temperature Test

4.1 Exposed Surfaces Test Defined. Exhaust system temperatures will be measured at the points where the engine exhaust system can contact plane surfaces established by the extremities of the power unit or power head. In the case of a chain saw, the plane surfaces will be established by the extremities of the saw with bar removed and a line passing through the lowest points in the spaces between the bumper spikes (dogs). See Fig. 2. To determine points of measurement, place the power unit in a sufficient number of positions on a flat surface to determine where the exhaust system components can contact the surface.

4.2 Apparatus. Use a calibrated loading device as shown in Fig. 3 with temperature sensitive coatings for exhaust system surfaces (such as Detectotemp or Tempilaq paints, or Tempilstik or Thermochron crayons, or equivalent) or unshielded thermocouples welded or embedded on the exhaust system.

EXHIBIT A (continued)

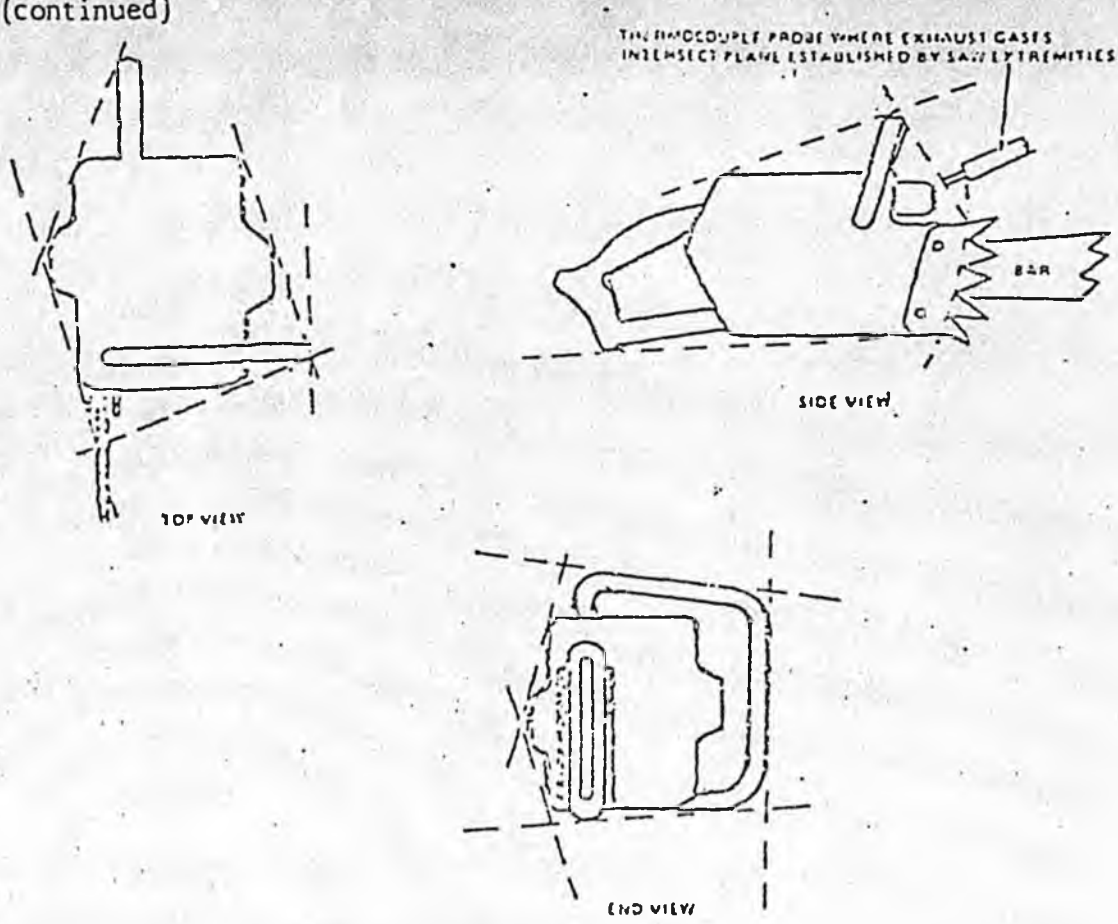


Fig. 2. Determination of locations for measuring exhaust system surface and exhaust gas discharge temperatures.

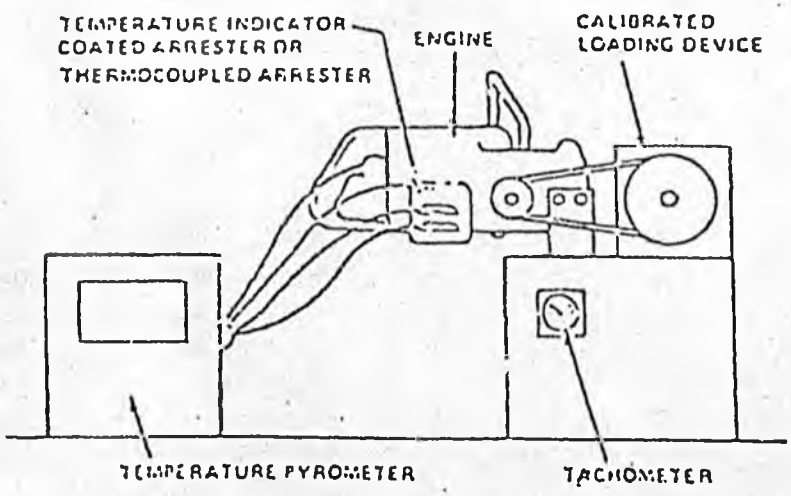


Fig. 3. Test apparatus for exhaust system surface temperature and exhaust gas discharge temperature measurement.

EXHIBIT A(continued)

4.3 Test Method

4.3.1 Install the power unit on the loading device as shown in Fig. 3. The engine shall be in the "as new" condition.

4.3.2 Weld or embed thermocouples, or other temperature indicators in locations as determined by 4.1. Where a large contact area exists a touch pyrometer must be used to locate the hottest surfaces for exact positioning of the thermocouples.

4.3.3 Operate the engine at wide open throttle full load. The ambient temperature during test runs shall be 68 ± 5 F (20 ± 3 C). Adjust the load and set the carburetor, if adjustable, for maximum power output at rated speed. Test runs shall be made at rated speed and at two additional speeds 1000 rpm above and below rated speed. For a chain saw rated at 7000 rpm, adjust for maximum power at this speed and make additional runs at 6000 and 8000 rpm. Allow all runs to become heat stabilized before recording temperatures. The engine must be tuned to factory specifications prior to test. Use the manufacturer's recommended fuel mixtures.

5. Exhaust Gas Temperature Test

5.1 Exhaust Gas Test Defined. Exhaust gas temperature will be measured at the point where the hottest gases intersect a plane surface established by the extremities of the power unit. In the case of a chain saw, the plane surfaces will be established as outlined in 4.1 and Fig. 2.

5.2 Apparatus. Use a loading device as shown in Fig. 3 and a shielded thermocouple to measure exhaust gas temperature.

5.3 Test Method. Load the engine as described in 4.3.3. During each run move the shielded thermocouple along the plane surface or surfaces defined by 5.1. When the maximum temperature is reached, record the measurement.

EXHIBIT A(continued)
Appendix

The following recommended exhaust system performance levels are based on the ignition characteristics of heavy vegetable fuels common to the Pacific Northwest region. Maximum allowable surface and exhaust gas temperatures were determined from time vs ignition temperature studies by the U. S. Forest Service.[1] Exhaust system design and durability criteria are based on field experience with chain saws.

Recommended Performance Levels

1. Carbon Particle Retention or Destruction. The spark arrester used with the engine exhaust system shall be designed to retain or destroy 90% or more of the carbon particles having a major diameter greater than 0.023 in (0.584 mm), as determined when tested in accordance with 3.

2. Exposed Surface Temperature. The exhaust system shall be designed so that the exposed surface temperature shall not exceed 550 F (288 C) as determined when tested in accordance with 4.

3. Exhaust Gas Temperature. The exhaust system shall be designed so that the exhaust gas temperature shall not exceed 475 F (246 C) as determined when tested in accordance with 5.

4. Debris Accumulation. The exhaust system shall be designed in such a manner that there are no pockets or corners where flammable material might accumulate. Pockets are permissible only if it can be substantiated by suitable test that material can be prevented from accumulating in the pockets.

5. Durability. The exhaust system must be constructed of durable material and so designed that it will, with normal use and maintenance, provide a reasonable service life. Parts designed for easy replacement as a part of routine maintenance shall have a service life of not less than 50 h. Cleaning of parts shall not be required more frequently than once for each 8 h. of operation.

6. Serviceability. The spark arrester shall be so designed that it may be readily inspected and cleaned.

1 D. S. Stocksted, Research Note INT 194, "Spontaneous and Piloted Ignition Of Pine Needles", USDA Forest Service, Northern Forest Fire Laboratory, 1975.

D. S. Stocksted, Prepublication Research Note, "Spontaneous and Piloted Ignition Of Cheatgrass", USDA Forest Service, Northern Forest Fire Laboratory, 1976.

G. C. Kaminski, "Ignition Time Vs. Temperature For Selected Forest Fuels", Project Record, USDA Forest Service, San Dimas Equipment Development Center, 1974.

From the Desk of

SENATOR DON BENNETT

Lucille Conners

486-3905

Hand trolling

30 yrs.

See

Oral

put her on list for notification of hearing

From the Desk of

SENATOR DON BENNETT

Contact Freeman with copy of this letter & find out if he would like to hold hearing re: hand trolling regs.

should give Mr. Herd 30 days notice

Paul C. Herd
Point Baker Hand Trollers Assn.
Point Baker, Ak.
99927

December 16, 1979

Sen. Don Bennett
Chairman, Adm. Reg. Rev. Comm.
Pouch V
Juneau, Ak.
99811

Dear Sir:

I would like to request the right to appear before the committee on hand trolling regulations.

Please give as much advance notice as possible, as our mail is slow at best and travel arrangements must be made well in advance.

Sincerely,

Paul C. Herd

Paul C. Herd

cc Rob Kocsis

Call Oral
when meeting
30 days more to me here

Shirley Reynolds
Box 961
Seward, Alaska 99664

December 11, 1979

Senator Don Bennett,Chairman
Administrative Regulation Review Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Bennett:

I was under the impression that we had a "primary manufacture" law to protect the saw mills in Alaska. Evidently I was wrong.

At one time there was a very ineffective AAC (copy attached) which addressed this, but even that has been repealed.

I realize the "State" receives a higher price on the timber sales when they allow the logs to be exported in the round, but I don't feel it is in the best interest of the "people of the State" to permit this.

Our local mill is in financial trouble due to the Icy Bay logs being exported in the round. They will soon have no logs to process at the Seward mill and therefore our unemployment rate will again go up. What's to prevent this from happening all over Alaska?

I have taken the liberty of re-writing the old AAC which was once in the books, as an example of what I feel we actually need. In the usual bureaucratic manner, the old one rambled on--- and on--and on, until it was weaked to the point that it said,"The Director may do as he pleases."

By simply deleting most of the paragraphs and writing "shall", rather than "may", it would be a law with meaning.

I feel immediate steps must be taken to rectify this abuse of Alaskan resources. Please take appropiate measures in the next session to enact a meaningful "primary manufacture" law. Thank you.

Sincerely,

Shirley Reynolds

cc: Senators
Freeman, Parr,Bierne, Dankworth & Hohman

Authority: AS 38.05.020

AS 38.05.115

11 AAC 71.210. PRIMARY MANUFACTURE. (a) The director ~~may~~ shall require that primary manufacture of logs, bolts, or similar forest products take place within the state. ~~If a public hearing is held on the sale under AS 38.05.305 or other statutes, the hearing agenda will include whether to require primary manufacture within the state. The director will decide on a case-by-case basis whether to impose or waive the primary manufacture requirement, based on the following guidelines~~.

(1) Sales of 50 MBM or less will not be subject to a primary manufacturing requirement. These sales are intended to serve a local need and are not designed to support commercial operations.

(2) Primary manufacture will be required when necessary to assure a continuing supply of timber for an existing industry or for the establishment of a new industry.

(3) In other cases, the director's decision must include a consideration of whether imposing or waiving the primary manufacture requirement would:

(A) permit a more complete utilization of wood fiber;

(B) prevent loss or deterioration, because of damage by fire, wind, or insects, of logs that are not marketable locally;

(C) provide forest products necessary to meet urgent and unusual needs of state residents;

(D) increase employment within the state; and

RESOURCE ASSOCIATES OF ALASKA, INC.
3230 AIRPORT WAY, FAIRBANKS, ALASKA 99701
TELEPHONE (907) 479-6231 / 6097
TELEX: 090 35402

Mr. Ted Smith, Director
Department of Natural Resources
State of Alaska
323 E. 4th Avenue
Anchorage, Alaska 99501

January 22, 1980

Dear Mr. Smith:

I have just obtained a copy of your Department's "Notice of Proposed Changes in the Regulations of the Department of Natural Resources." I have not had time to sit down and evaluate each change, nor have I had at my disposal the State Statutes or Administrative Code. However, since written comments have to be in your office by the 25th of January, I would like to state for the record that I am opposed to any such changes at this time.

You say that these changes promise to be more efficient both to administer and to obtain. That statement is pretty hard to swallow, as I have yet to see any changes by the state or federal government to regulations that made things simpler or easier to administer.

I also note in a quick overview of the proposed changes, that when a use permit is issued, the director may revoke it at any time he "deems" necessary for no reason at all. With authorities like that, no one will ever know where they stand with the state. In a recent article of Alaska Construction & Oil, Governor Hammond stated quote, "The challenge for Alaska is to create an economic climate that will attract resource development." Now, with powers such as these proposed changes are suggesting, no company in its right mind would want to spend millions of dollars in exploration never knowing when the use permit would be jerked away from them. If these proposed regulations are adopted I would suggest that revoking a use permit could only be done for cause, not because the director or his subordinate doesn't like the company or individual that has ruffled a few feathers in the Department; with regulations as suggested, this could very well happen. These proposed changes will not assist in what the Governor's wishes are for resource development, but instead create a much harder working environment for industry.

Mr. Smith, if you will think back a couple of years, you will remember the State had real problems with commercial lease land regulations. The Governor saw fit at that time to form a commission, (which both you and I served on, along with many others), to look into those leasing problems. It took that commission months of meetings, and many of those meetings with the public, before it made its recommendation on regulation changes to the Governor. In that particular case we were dealing with a few effected sectors of the public. The proposed changes you are now requesting, effect all of the people, businesses, and industries in and out of the state. I feel this warrants a similar

commission to that which was formed for the state leasing problem. I'm sure it will not set things back too much with your department if such a commission was formed to make recommendations on your proposed changes. It may take many more meetings, and much more input by a wide sector of the public, but the land, and the Department of Natural Resources will still be around when such recommendations are made, in other words, I see no real rush on these changes, because of the importance of them.

I request you stop the proceedings on this issue. The way these proposed changes are now being handled, gives me the feeling that they're being rammed down our throats. Remember you promise to make these changes more efficient both to administer and to obtain. Well, let's all work together to get that done so that we all understand and agree to them.

The way things are going on the D-2 issue in Congress, the public is very wary of any more changes that may effect their rights to public lands.

Sincerely,

Carl H. Marrs

CHM: ssh

cc: Governor Jay Hammond
Commissioner Robert Leresche

Alaska State Legislature

ADMINISTRATIVE REGULATION REVIEW COMMITTEE

Pouch V
State Capitol
Juneau, Alaska 99811

SENATE

Don Bennett, Chairman
M. "Ed" Dankworth
George Hohman

HOUSE OF REPRESENTATIVES

Oral E. Freeman, Vice-Chairman
M.F. "Mike" Beirne
Charlie Parr

PLEASE NOTE ENCLOSED MATERIAL REGARDING LOT SEWAGE DISPOSAL FOR TOMORROW EVENING'S ARRC MEETING, 7:00, SENATE FINANCE ROOM.

Carla

Feb 16 Dandy: Copy this and send Copy to Senator Bennett Chel

Sewage regs may haunt state land sale program

By SUSAN FISHER
News-Miner Bureau

JUNEAU—A tiff in Ketchikan set it off, but other areas may face similar showdowns over sewage disposal standards under the state's land sale program.

The News-Miner learned Friday that of 50 state land parcels offered for sale to the public, only 30 were approved for on-site sewage disposal and water use.

The remaining 20 probably will carry "conditional approval," including some restrictions on the platting regarding waste disposal and water use.

Conditional approval is spelled out on the land plat, and varies depending on the intended land use. What it can mean for those wanting to build homes on conditionally approved sites is difficulty in getting bank financing if they don't abide by Department of Environmental Conservation regulations.

A land sale in Ketchikan caught the state's attention after the Legislature did not approve supplemental funding for DEC.

Earlier this week Commissioner Ernie Mueller announced he will lay off 125 DEC workers March 1 if the Legislature does not appropriate the money.

Rep. Oral Freeman, D-Ketchikan, who has been battling DEC over the sewage regulations, sees the confrontation as another administrative attempt to thwart the intent of the land sale program.

Legislators last year passed House Bill 66, ordering the state to offer the public 100,000 acres of land each year.

Doug Lowery, DEC regional environmental supervisor in Fairbanks, said a number of the state lands offered for sale in the Interior are among the conditionally approved parcels, either because of permafrost or high water tables.

The land offered for sale in Ketchikan has a muskeg soil, with a clay layer and bedrock beneath it. DEC has refused to allow on-site waste disposal, based on a soil consultant's report.

Lowery said soil studies are made after the Department of Natural Resource's Division of Lands selects the parcels to be offered for sale. The consulting work is done by hired, private firms.

DEC Deputy Commissioner Deming Cowles said improper sewage disposal can not only contaminate water supplies, but lead to several diseases, such as hepatitis and dysentery.

Consultants found an already high human waste count in Ketchikan water, Cowles said.

The public health and the ability of soils to absorb waste are among factors DEC looks at in deciding if on-site sewage disposal will be permitted, Cowles indicated.

DEC also has said no to using compost toilets on the Ketchikan lots that will be offered for sale.

What the department is pushing for is installation of a closed sewage disposal system, such as a vault privy system or a collector system with small individual package plants.

But Freeman, who supports an approach more like the old homesteading program, doesn't buy the department's arguments.

With 130 inches of rainfall each year, Ketchikan residents for years have been collecting their water off roofs, Freeman says.

And the $2 million or more road and sewage installation the state wants to impose on the land for sale would mean an individual assessment upward of $13,000 on each half-acre lot, Freeman said.

But he is finding himself at odds with some Ketchikan municipal officials, who are willing to go along with the improvements.

Cowles says that if the Ketchikan borough declares the land a service district, it may become eligible for state sewer and road improvement money.

The state plans to subdivide the Ketchikan land into half-acre lots. Freeman, believing larger lot sizes might make a difference, got the Division of Lands to agree that it could be offered in three- and five-acre lots.

But lot size made no difference regarding the DEC regulations.

Cowles said the plat restrictions could make it difficult for individuals to get financing, but "banks don't like to finance lots with no improvements" anyway.

The Ketchikan matter is resolvable, Cowles said, and DNR, Division of Lands, and DEC officials have been conferring with legislators this past week.

"We're talking about coming up with a couple of different types of systems," Cowles said.

Resolution backs airport switch

Municipal government leaders from Anchorage and Fairbanks agreed Friday to press the state to work on greater local control of airports in the two cities.

The plan came in a resolution passed in the joint meeting of the Anchorage municipal assembly and the Fairbanks City Council and Borough Assembly in Anchorage.

The resolution asks for joint efforts of the local governments and the state Department of Transportation to "begin to develop local management options . . . for the acquisition, management and/or ownership of the international airports."

Anchorage leaders have announced they want to take over the Anchorage International Airport, but for both airports to ensure a taxation burden will not be levied on the citizens of either community."

The resolution urged the transfers be made by July 1, 1981, and that transfer of airport management or ownership take place only upon the joint agreement of all local governments.

Another resolution adopted in the meeting supported a bill in the Legislature, SB 385, for building an electric power line between Fairbanks and Anchorage. The group also went on record in support of SB 294 and SB 295, which provide for construction of the Susitna River hydroelectric project by the Alaska Power Authority.

Two resolutions

February 7, 1980

QUESTION: How many acres and how many lots in proposed "Mud Bay" land disposal proposed in Ketchikan?

Ron Schonenbath, Div. of Land (465-2433)

117 Lots

265.7 acres to dispose of but 197.4 acres are right-of-ways and greenbelt areas. Actual acres 68.3

.5
117 | 68.3
55 5
98

1/2 acre per lot

3 acres per lot x 75 = 225 acres

JAY S. HAMMOND, Governor

DEPARTMENT OF NATURAL RESOURCES

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

POUCH M
JUNEAU, ALASKA 99811

January 11, 1980

The Honorable Carroll G. Fader
Borough Mayor
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Dear Mayor Fader,

This acknowledges receipt of your letter of January 8 in regards to the proposed classification and disposals of 265.7 acres of land within U.S.S. 3769 six miles northwest of Ketchikan, emphasis on the proposed homesite parcels.

I will not undertake to respond to the main thrust of your letter at this time since further discussions are indicated.

Thank you for the generous offer of assistance and that of the planning department. I am hopeful and confident a way can be found to satisfy both our statuatory burden and Borough needs.

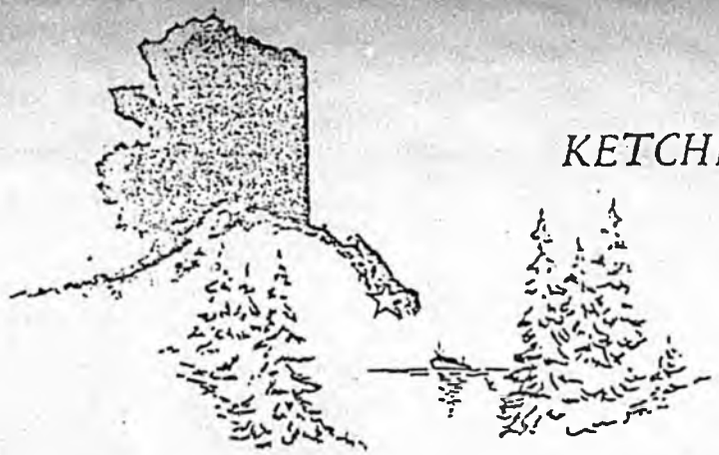
Sincerely yours,

THEODORE G. SMITH, Director

By:

Henry Lee Hall
District Manager
Southeastern Lands District

JGLH



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

ALASKA DIV. OF LANDS

JAN 10 1980

RECEIVED

January 8, 1980

Henry Lee Hall, Manager
Southeastern Lands District
Division of Forest, Land and Water Management
Alaska Department of Natural Resources
Pouch M
Juneau, Alaska 99811

Attention: Ron Shonenbach, Land Management Officer

Dear Mr. Hall:

This acknowledges receipt of your letter of December 3, 1979 notifying Ketchikan Gateway Borough of the Division's intent to classify and dispose of 265.7 acres of land within USS 3769, 6 miles northwest of Ketchikan. I understand that the Division has filed a preliminary subdivision plat for Platting Board review, but has not petitioned the Borough for a rezone of the Mud Bay area. USS 3769 is currently zoned Future Development (FD) and must be rezoned to a residential category prior to development.

As discussed in previous correspondence and conversations between Borough and Division staff, we are concerned about the consequences of selling 134 parcels in the upper Mud Bay area without road and sewer improvements. The Mud Bay subdivision is not accessed by an existing road and, due to poor soil cover, is not approved by Alaska Department of Environmental Conservation for on-lot sewage disposal. Yet, as your letter states, 20 percent of the parcels are to be released under the homesite program. Hence, 27 candidates for parcels in the Mud Bay subdivision must construct dwellings in just over two years and occupy them for 35 months within the first five years to receive marketable title to their lots. Securing financing to construct a house without marketable title to the land is likely to be problematic for the homesite participant; organizing other land recipients, most of whom will not be bound by homesite deadlines, to construct and maintain costly roads and sewers may prove impossible. Due to these concerns, the Borough Assembly is recommending to the Planning and Zoning Commission (Platting Board) that the Mud Bay subdivision plat not be approved.

The plat review and rezone hearings will provide a forum for the community to discuss the proposed disposal in greater depth. Please do not hesitate to cali on me or the planning department if we may assist you in preparing and submitting your rezone application.

Sincerely,

Carroll G. Fader
Borough Mayor

KC:wr
cc: Planning and Zoning Commission
Russell W. Walker, Municipal Attorney



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

February 6, 1980

The Honorable Oral Freeman
State of Alaska
Pouch V
Juneau, Alaska 99811

Dear Representative Freeman:

The large lot vs. small lot issue revolving around the Mud Bight disposal is becoming increasingly confused. I'll start from the beginning to explain why this department is recommending to the Borough Planning Commission that the subdivision layout design of 116 lots ranging in size from one-half acre to 30,000 square feet (attachment 1) be approved.

In fall of 1978 the state was pursuing development of three large subdivisions in the Ketchikan area - Mud Bight, South Saxman and Mountain Point. The consulting engineers, Charles Pool and Associates and Tryck, Nyman and Hayes, informed the Borough Land Committee and planning department staff that the soils comprising the Mud Bight and South Saxman subdivisions were not capable of absorbing sewage disposed on-site using conventional, affordable treatment systems. Because of the Land Committee's concern that this problem would hinder not only state land disposals but also future borough disposals, planning staff urged DEC to begin working with the engineers, DNR and the Land Committee to find a means of addressing sewage disposal in areas around Ketchikan that do not have on-site absorption capabilities.

Attachment 2 includes reports prepared for and summarizing the workshop that followed which the Land Committee, the Planning Commission, the two engineering firms, DEC, DNR and the planning department attended. The engineers presented their findings and, as the memo from the Division of Lands states, they concluded that "the soils in all three areas have very limited capability to handle on site disposal of waste water." At that time it appeared that a central sewage collection and disposal system would be required to meet DEC and EPA standards. After many discussions between DEC and Borough representatives, DEC has approved use of a central collection system connecting individual treatment plants (attachment 3).

The Southeast District Lands Office notified the Borough Manager in August of 1979 (attachment 4) that, of the three proposed subdivisions, the Division was preparing Mud Bight for disposal in FY 80. As the letter states, even with lot sizes ranging from 3 to 5 acres, the plat would be filed with a notification "to the effect that the subdivision is not approved by DEC for on-site disposal unless a closed system is used."

When Pool and Associates presented three alternative subdivision layouts for Mud Bight the planning department was given a day to comment before the Division selected the layout. Staff, working with a member of the Planning Commission, sent a letter endorsing the clustered lot concept (attachment 5). The commission members have since reviewed and concurred with the department's recommendation. This design will minimize the short and long term costs of constructing and maintaining both roads and a common sewage collection system by: (1) maximizing the number of property owners to be served per road and sewer line, (2) minimizing the land area to be covered by improvements, and (3) taking advantage of the terrain to minimize costs of installing roads and a gravity flow sewage collector line. The cluster design allows for sparsely populated settlement by concentrating lots on lands suited for residential use while leaving steep, wet and muskeg soils as open space.

Based on the information we received, larger 3 to 5 acre lots would not result in DEC approval. However, a large lot subdivision would increase the costs to be borne by land owners for road and sewer line construction and maintenance. As you can see from the attached subdivision layout, if land area were a solution to the waste disposal problem, the large area of open land surrounding the half acre to 30,000 square foot lots would fulfill this requirement in the same manner as large lots - but larger lots will result in higher improvement costs.

I hope this and the attached materials explain to your satisfaction why the planning department is recommending that the Planning Commission endorse the present Mud Bight subdivision layout. If not, or if I can provide further information, please do not hesitate to call.

Sincerely,

Kathryn L. Carssow
Planning Director

KC:wr
Attachments

cc: Mayor and Borough Assembly
Planning Commission
Theodore G. Smith, Director, Division of Forest, Land and Water Management
Henry Lee Hall, Manager, Southeast Land District
Randolf Bayless, Regional Environmental Supervisor

ATTACHMENT 1

TRYCK NYMAN & HAYES
ENGINEERS / PLANNERS / SURVEYORS

Job No. 7601

September 7, 1978

Mr. Claud M. Hoffman
Chief, Cadastral Engineer
Division of Lands
Department of Natural Resources
323 East 4th Avenue
Anchorage, Alaska 99501

FILE

Re: A.D.L. Subdivision, Mud Bay, Alaska

Dear Claud:

This letter is to inform you that we are holding back from doing any work on a preliminary layout for Mud Bay subdivision, per your verbal request on Thursday, August 31.

Currently we are finishing the paper work from the field data collected in Phase I: topo map; plots for penetration tests, test pits, and percolation tests. Upon completion of our office work we will bring a stop to all work other than correspondence.

Last Friday I had a meeting with Mark Bergar of the Department of Environmental Conservation. His opinion at that time was that we do not have adequate ground cover above bedrock for on-site sewage treatment. This will eliminate a subdivision designed for year-round living, although he did say that it could possibly be satisfactory for recreational use; summer homes using a Forest Service type outhouse. The Department of Environmental Conservation should be giving us a formal reply this week.

Enclosed is a map of our penetration test, test pits and percolation tests along with logs of the test pits and results of the perc tests. We are waiting for further instruction from your office.

Sincerely,

TRYCK, NYMAN & HAYES
Southeast Alaska Branch

By Tom Kirchner
Tom M. Kirchner

TMK:lb

Enclosure

RYLR
NYMAN
&HAYES

September 7, 1978

Job 7601.0

SITE REPORT
A.D.L. SUBDIVISION
MUD BAY, ALASKA
U.S.S. 3769

U.S. Survey 3769 has three general regions. The east one-third is comprised of a large hill covered with tall spruce, hemlock and cedar. The soil generally consists of one to two feet of organic and silty organic soils.

A second area that includes the north one-fourth and west one-third has a dense growth of tall spruce, hemlock and cedar. The ground is arrayed with many small gullies and streams. Through the center and west one-third of the U.S. Survey, there are several deep stream valleys, with one sinking to forty-five or fifty feet deep. Soils consist of one to two feet of organic and silty organic soil. Towards the center of the U.S. Survey there is considerable water that flows through the organic soil layers.

The center area of the U.S.S. is mostly comprised of muskeg with scattered shore pine. There are some small knolls throughout. Surface water drains either towards the collection of streams that drain into Mud Bay or toward the southeast. There are very few streams on the southeast side. Soil, for the most part, is comprised of organic and silty-organic soils that average two to five feet deep.

Bedrock for the site consists of shale with a layer of silty-sand and broken shale fragments over its surface.

TK

ATTACHMENT I

DF SURVEY

NAME OF SURVEYOR

CHARLES PLAY & ASSOC, INC

STATE OF ALASKA
DEPARTMENT OF NATURAL RESOURCES
DIVISION OF TECHNICAL SERVICES
ANCHORAGE, ALASKA

SKA STATE LAND SURVEY NO. 79-243

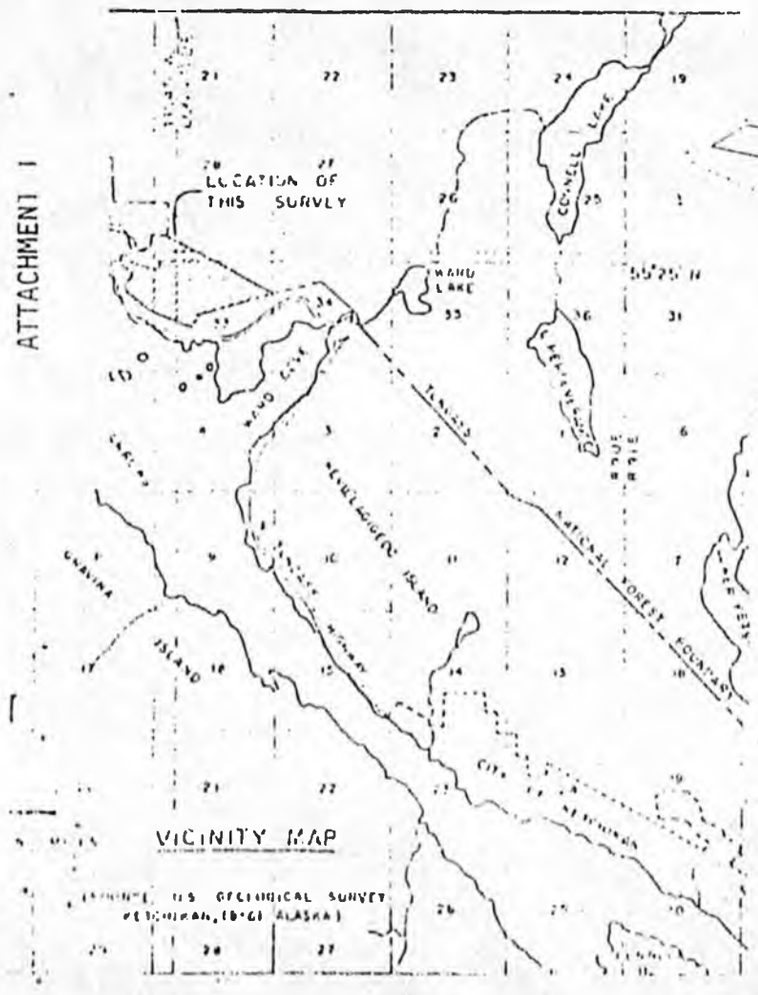
JBDIVISION OF LOT 2, U.S. SURVEY 3769

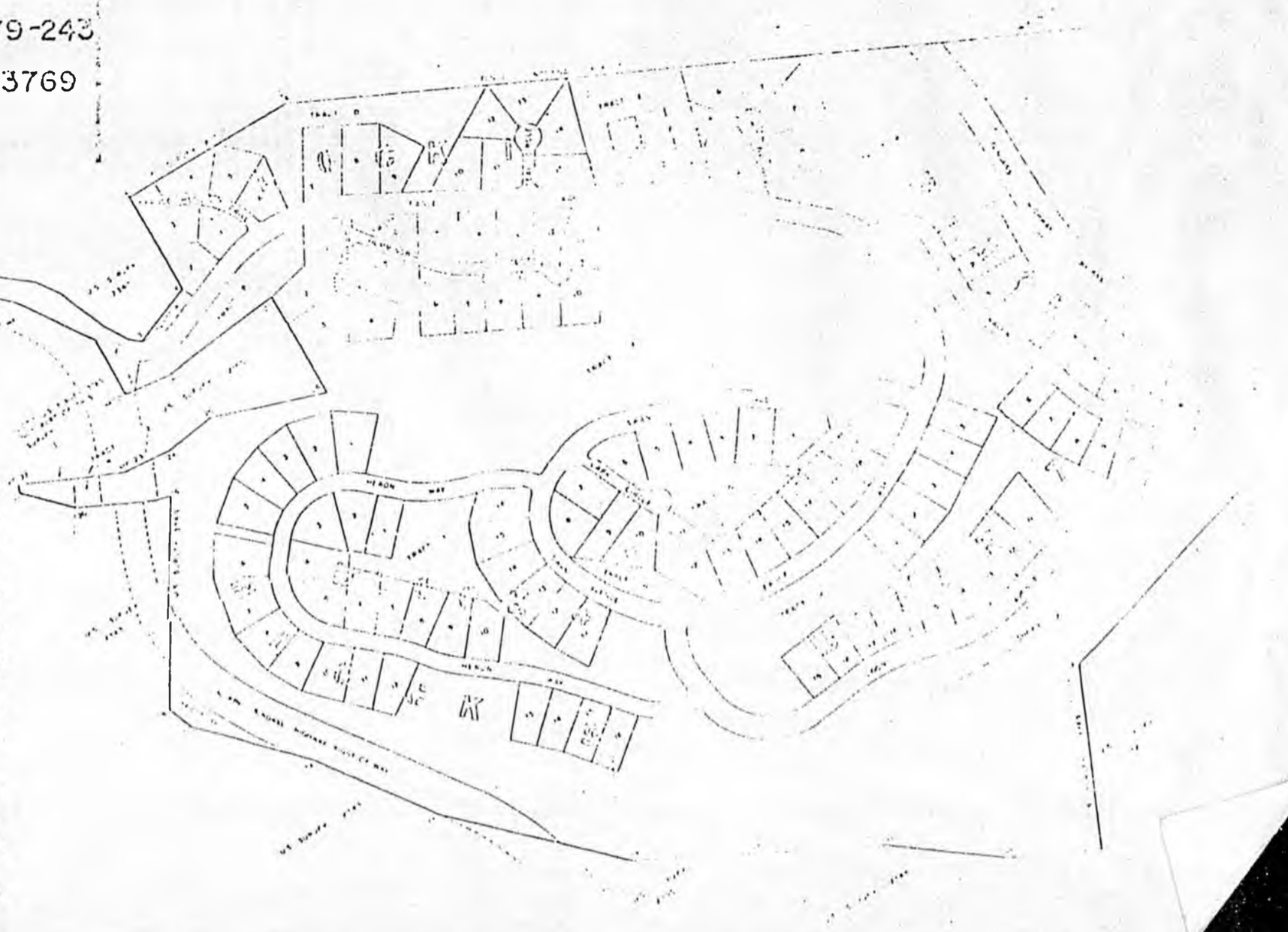
MUD BIGHT

PRELIMINARY PLA

LEGEND

- GLO/BLM/USGS/USCE MONUMENTS RECOVERED
- DTS OFFICIAL ON PRIMARY BOUNDARY CORNERS SET
- COPPERWELD OR EQUIVALENT SET AND WITNESSED
- 3/4 INCH IRON PIPE SET
- USC & GS, USGS, USCE, AND BLM ET POINTS (DEFINED BY AGENCY AS APPLICABLE)
- ( ) BEARINGS AND DISTANCES IN PARENTHESIS ARE RECORD U.S SURVEY 3769





ATTACHMENT 2

MEMORANDUM

DIVISION OF FOREST, LAND & WATER MANAGEMENT

TO: Andrew W. Pekovich
District Lands Officer

DATE: October 26, 1978

FILE NO: 1430, 2300

TELEPHONE NO:

FROM: Vic Lonn
Land Disposal Officer

SUBJECT: Land Disposals - Ketchikan

On October 10, 1978, a meeting was held in Ketchikan, at the request of the Alaska Department of Environmental Conservation, to discuss site characteristics and limitations on three subdivisions proposed by the Division of Forest, Land and Water Management. These subdivisions are at Mud Bay, Saxman and Mountain Point and have had preliminary survey and soils work done under engineering service contracts.

The meeting was well attended by our engineering consultants, representatives from the Ketchikan Gateway Borough, and Alaska Department of Environmental Conservation. A complete list is attached. Ron Thiel, project engineer; Ed Yarmak, soils; George Marks, surveyor, and I represented the Division of Forest, Land & Water Management.

Ron Thiel gave a general overview of the three projects and their present status. Bruce Hoffman and Ron Flinn spoke on DEC standards and procedures. The DEC must approve any subdivision of five or more lots. Their primary concern, in this instance, is with waste water disposal.

The discussions by Mr. Frank Nyman, of Trych Nyman and Hayes, on the Mud Bay project and Mr. Dave Benson, of Charles Pool and Associates, on Saxman and Mountain Point indicated soils on all three areas have very limited capability to handle on site disposal of waste water. The project areas are characterized by organic soils overlaying bedrock. The information available at this time indicates that in order to produce a quality subdivision and meet DEC standards it will be necessary to provide for central sewer collection and disposal. This requirement plus the cost of providing adequate road access will require a very sizeable capital investment prior to offering these subdivisions to the public.

We stated that our intent on any subdivision offering was to provide a quality product that met all Borough and DEC standards. Ron Theil advised that we would continue evaluation thru our consultants and present a budget request, with back up data, for the necessary capital investment funding to enable development of all three projects.

The Borough advised that they would be taking an additional look at the projects and would keep us advised of their concerns and recommendations.

On the whole, the meeting was on a positive note and served to let the Borough and DEC know where we are with these proposals and what follow up will be necessary.

cc: Ron Thiel
Bruce Hoffman
Mtn Pt File
Kathy Carsson
Saxman File
Mud Bay File
Claud Hoffman
Dick LaFebvre

ATTACHMENT 3

f/c Mud Bight Subdivision

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPT. OF ENVIRONMENTAL CONSERVATION

SOUTHEAST REGIONAL OFFICE / POUCH O – JUNEAU 99811

January 23, 1980

Kathy Carssow
Planning Director
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Dear Ms. Carssow:

Re: Mud Bight Subdivision

After our September 27th discussion in your office, we followed up your suggestion that a central collector sewer could be the solution to an otherwise sticky problem. Both D.N.R. and our municipal grants people agree that this is feasible, and your proposed lot layout is well designed for this type of service.

Soil conditions in the proposed subdivision are so bad that on-lot sewage disposal would simply not work and there's no way that we could legally approve on-lot sewage disposal. The alternative of central collection sewer receiving treated sewage from individual or clusters of dwellings served by their own small treatment plants has several advantages--

--lower initial sewer costs with pay-as-you-develop treatment costs, eliminating an over-sized and costly central community treatment plant receiving less than "design flow" for who knows how long

--infiltration of ground water into sewers causes no pumping expense or treatment difficulties associated with dilute sewage

--treatment costs are borne directly by the individual treater(s)

The only hitch is that an entity capable of receiving municipal grant funds and responsible for operation must administer the construction and maintenance of that central collector sewer.

The Department presently has grant funding available to incorporated municipalities to fund 50% of the non-federal cost of water and sewerage system construction. Communities accepting funding must agree to assume responsibility for on-going operation and maintenance of the facilities constructed. Projects funded under this program include water treatment and distribution, and sewage collection. Sufficient funds presently exist to fund projects on an as requested basis.

The Department also administers grant funds allocated by EPA to the State for construction of sewage treatment facilities. These funds can cover 75% of eligible project costs (85% if the project employs innovative or alternative technology). State funds can also be used to supply half the non-federal share for such projects. Thus 87.5% of the project costs are funded by State/Federal Grants, as is the case with the facilities currently being constructed by the City of Ketchikan.

Further grant information and application procedures can be obtained by calling Bob Martin of the Department's Facility Construction and Operations office at 465-2611.

In order to relieve the apparent demand for building sites in Ketchikan, this alternative seems to be the best solution for this particular development proposal. I hope that we will be able to assist you in the development of services to the potential home owners in the area.

Sincerely,

Randolph Bayliss
Regional Environmental Supervisor

cc: Henry Lee Hall
Ron Shonenbach
Bob Martin
C. Deming Cowles

DEPARTMENT OF NATURAL RESOURCES

ATTACHMENT 4

DIVISION OF FOREST, LAND AND WATER MANAGEMENT

July 5, 1979

Re: 2300 Land Disposal

Ms. Judi Slajer
Borough Manager
Ketchikan Gateway Borough
344 Front Street
Ketchikan, Alaska 99901

Dear Ms. Slajer:

This is to advise you that the Division of Forest, Land, and Water Management is planning to make a State land disposal within the Ketchikan Gateway Borough during fiscal year 1980.

Last year, as you know, we did preliminary work on three possible subdivisions within the Borough. These were at Mud Bay, Saxman and Mountain Point. At this time we plan to follow through with a plat for Mud Bay Since Mountain Point and Saxman are still pending T. A. we do not plan to offer them during fiscal year 1980.

Lot sizes for Mud Bay will be in the 3-5 acre range. We anticipate filing the plat with a notation to the effect that the subdivision is not approved by DEC for on site sewage disposal unless a closed system is used.

The Mud Bay project would be appoximately 265 acres in lot 2, USS 3769. Please advise the Southeast District if you have any comments regarding this project.

Sincerely,

Henry Lee Hall, Manager
Southeastern Land District

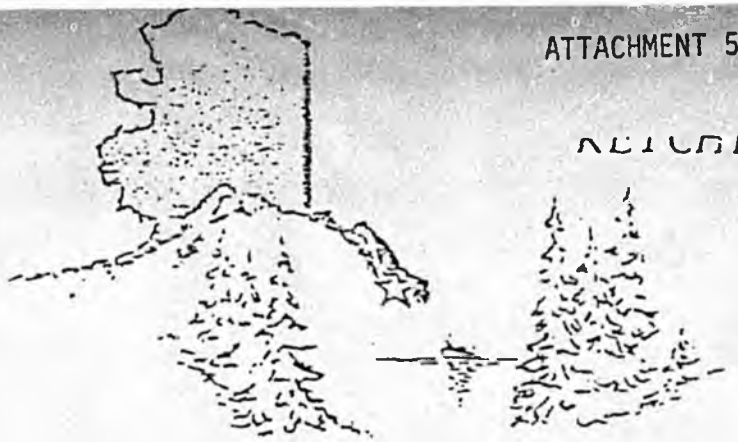
by: Andy Pekovich
District Lands Officer

cc: Kathy Carssow

BOROUGH
RECEIVED
JUL 11 1979
By L.W.
KETCHIKAN GATEWAY BOROUGH

10-JCLH

ATTACHMENT 5



KETCHIKAN GATEWAY BOROUGH
344 FRONT STREET
KETCHIKAN, ALASKA 99901

Engineers' report attached; please note last page.

October 22, 1979

Claud M. Hoffman, Director
Division of Technical Services
Alaska Department of Natural Resources
703 W. Northern Lights Blvd.
Anchorage, Alaska 99503

Dear Mr. Hoffman:

I regret that Ketchikan Gateway Borough will not be represented at the upcoming meeting of the Disposal Review Committee scheduled for this Thursday, October 26. Today we received copies of the three alternative conceptual plans developed by Charles Pool and Associates, Inc. for the state subdivision at Mud Bay. I wish to commend Pool and Associates on the quality of the conceptual design presentation and to express my appreciation to their staff for keeping us informed on their progress.

The Planning Department endorses the conceptual subdivision design labeled Alternative 2 showing clustered lots which vary in size from one-half acre to 30,000 square feet. Alternative 2 incorporates three important subdivision and land disposal objectives. First, this design concept minimizes the cost of road, sewer, and water service to be borne by the land recipient. This is achieved by: (1) maximizing the number of property owners to be served per facility extension; (2) minimizing the land area to be covered by improvements; and (3) taking advantage of the natural terrain in locating roads and gravity flow sewage collectors. Second, the cluster design allows for a rural, sparsely populated settlement pattern by concentrating development on lands most suited for residential use while leaving unsuitable steep, wet, and muskeg soils as well as streamways as open space. And lastly, Alternative 2 allows for a controlled level of resubdivision to occur in the future in an orderly and cost effective manner.

In contrast, Alternatives 1 and 3 compound development costs for the land recipient and encourage extensive, haphazard resubdivision. Use of either of these two designs is likely to result in the need for numerous short, deadend roads, sewer, and water extensions to accommodate resubdivided lots. These not only will be costly to construct but also to operate and maintain.

Although we realize that Alternative 2 requires further refinement, the concepts underlying this preliminary design are sound. Prior to work beginning on the final subdivision design, we would like to confer with either your staff or Pool and Associates on specific concerns we have relating to lot layout and road access along with recommendations the Planning and Zoning Commission may have.

Due to time constraints, the Commission did not have an opportunity to review this material. We will include consideration of the three subdivision design alternatives on the agenda for the Commission's next meeting scheduled for October 30. I would appreciate your advising me of any further developments occurring between now and then.

Thank you for affording us this opportunity to comment on the conceptual design alternatives for the Mud Bay subdivision. Please feel free to include me in a conference call this Thursday if you or members of the committee wish further explanation of the department's comments. We look forward to a continued cooperative working relationship with your staff and Pool and Associates in finalizing plans for the Mud Bay subdivision.

Respectfully,

Kathryn L. Carssow

Kathryn L. Carssow
Planning Director

cc: Planning & Zoning Commission
Charles Pool & Associates, Inc.

KLC:lw

CHARLES POGL & ASSOCIATES, INC.
CONSULTING ENGINEERS & SURVEYORS
1225 Tongass Avenue
Ketchikan, Alaska 99901



(907) 225-6526

October 22, 1979

Mr. Claude Hoffman
Acting Director
Division of Technical Services
Department of Natural Resources
State of Alaska
703 West Northern Lights Blvd.
Anchorage, Alaska 99503

RE: Mud Bay GSC 189

Dear Mr. Hoffman:

Enclosed are six (6) copies of each of the three (3) Master Plan Alternatives. These alternatives are purely conceptual, and are intended only to give a general overview of the relationship between the various elements of the proposed subdivision.

The road system, as depicted on these alternatives, is based on field investigation by our road location engineer. This was necessary due to apparent discrepancies between the property boundaries and contour lines, and the lack of drainage information on the aerial survey plat compiled by Tryck, Nyman and Hayes.

Alternative I assumes a low density large lot approach, with the 38 created lots being between 2 1/2 and 5 acres. This approach places the maximum acreage in private ownership, and has the least extensive road system requiring only about 2 1/2 miles. However, it makes little provision for green belts, and is subject to multiple resubdivisions. Due to the topography and drainage patterns, it was necessary to form some odd shaped lots.

Alternative 2 is a high density approach creating 134 lots. The lots in this alternative range between 1/2 and 2/3 of an acre, and require a 3-mile road system to connect them. The intent in this approach is to cluster the development thereby maximizing the green belts and general public use areas. This configuration is more conducive to the future development of centralized sewer and water systems.

Alternative 3 is a blend of 1 and 2 establishing 81 lots in the 1 to 3 acre range, and requiring a 2.1 mile long road system. Although some of these lots encompass areas which are not ideally suited for development, an attempt was made to place the majority of these areas into green belts.

During our field investigation, no major slide areas were noted. We did, however, find most of the soils to be poorly drained and the water table to be high throughout the majority of the area. About two-thirds of the developable area drains into the Mud Bight Basin, and the remaining one-third drains into the Refuge Cove and South Sunset Drive area. D.E.C. has stated that this area is unsuitable for on-site disposal of sewage and waste water. The development of this area will, therefore, require the formulation of a Local Improvement District (L.I.D.). The only economically feasible way of accomplishing this task is to increase the density thereby bringing the cost of these improvements within reach. Alternative 2 is designed to facilitate this end, as it clusters the development, and the road system is laid out to maximize the use of gravity sewers where possible. We feel strong consideration should be given to this alternative.

If you have any questions or need additional information, please contact our office.

Very truly yours,

CHARLES POOL & ASSOCIATES, INC.

Don Fordney

By: Donald P. Fordney

DPF:fr
Enc.
cc Ketchikan Gateway Borough