

HB

132

COMMITTEE REPORT

HOUSE

2/6/81

FURTHER:

(11)

Date: 5/25/81

Mr. Speaker:

The Committee on RESOURCES has had HB 132

"An Act authorizing the commissioner of natural resources to acquire certain timber cutting rights."

under consideration and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass do not pass
- do pass with attached amendments(s)
- replace with CS for HB 132 same title
 new title
- and recommends _____
- AND attaches a "Letter of Intent" New Fiscal Note
- reports it back without recommendation INDIVIDUAL
- referred to the _____ Committee

**MEMBERS SIGNING
DO PASS**

Terry Gardiner

Robert H. Good

Paul J. Gorman

**MEMBERS HAVING
OTHER RECOMMENDATIONS:**

W. B. Carson 7/10/81

Robert H. Good NO REC

Paul J. Gorman No Rec

_____ _____

Terry Gardiner

C. AIRMAN

STATE OF ALASKA

DNR

JAY S. HAMMOND, GOVERNOR

BOARD OF FISHERIES/BOARD OF GAME DEPARTMENT OF FISH AND GAME

SUPPORT BUILDING
JUNEAU, ALASKA 99801

March 4, 1981

The Alaska Board of Fisheries and the Alaska Board of Game are responsible for regulating the harvest of Alaska's immense fisheries and wildlife resources. These regulations are implemented by the staff of the Alaska Department of Fish and Game.

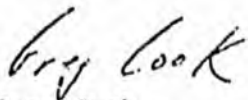
At their December, 1980 joint meeting in Anchorage, the two Boards listened to four hours of presentations by the United States Forest Service and the Alaska Department of Fish and Game regarding a crucial Alaskan habitat issue: timber harvest in Southeast Alaska. Both presentations were followed by an extensive period of questions and answers regarding the impacts of clearcutting on fisheries and wildlife available for public harvest.

On behalf of the two Boards, I urge you to read the enclosed Resolution and give serious consideration to the issues it raises. If you have specific questions, I would be pleased to respond on behalf of the Boards. Dr. Ronald O. Skoog, Commissioner, will respond on behalf of the Department of Fish and Game.

DISTRIBUTION:

Governor Hammond
U.S. Forest Service-Regional and Washington, D.C.
Commissioner Skoog-ADF&G
Commissioner LeResche-DNR
USFWS Regional Director
Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young
Secretary of Agriculture
All Alaska Legislators
Juneau Empire, Sitka Sentinel, Ketchikan News
All Southeast Alaska local Fish and Game Advisory Committees

Sincerely,



Greg Cook
Executive Director
Boards of Fisheries and Game
(907) 465-4108

Enclosure: Joint Resolution #80-80-JB

BOARDS OF FISHERIES AND GAME
JOINT RESOLUTION #80-80-JB

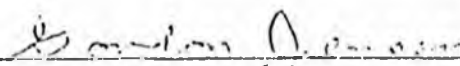
CLEARCUT LOGGING IN SOUTHEAST ALASKA

- WHEREAS, the Alaska Boards of Fisheries and Game are statutorily charged with the conservation and development of fish and game resources of the State and the Alaska Constitution mandates maintenance of fish and game populations on a sustained yield basis, and
- WHEREAS, the U.S. Forest Service is committed to multiple use management through various federal acts and its own regulations, and
- WHEREAS, the present forest management practice of clearcut logging throughout Southeast Alaska on a 90-125 year rotation is permanently converting diverse old growth stands with high fish and wildlife values to less diverse second growth stands of much less value to fish and wildlife, and
- WHEREAS, past and projected timber harvest is concentrated in the higher volume stands of limited occurrence and current research has shown these stands to be highly important Sitka black-tailed deer winter habitat, and
- WHEREAS, current scientific knowledge of other fish and wildlife species needs in relation to old growth forest is limited, yet indicates goats, marten, Vancouver Canada geese, bald eagles, salmonids and other species of fish and wildlife may be old growth dependent during some periods of the year, and
- WHEREAS, the salmon commercial fisheries are one of the most valuable industries in Southeast Alaska and both subsistence and recreational use of fish and wildlife is highly important from both an economic and social standpoint, and
- WHEREAS, the State Forest Practices Act, which regulates forest management activities on State and private lands, does not adequately address wildlife concerns,

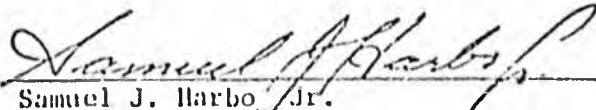
Now therefore be it resolved by the Joint Boards of Fisheries and Game that:

1. The public be fully informed by the Department of Fish and Game and the U.S. Forest Service of the long term known and potential impacts of clearcut logging on fish and wildlife habitat and subsequent population levels.
2. The Tongass Land Management Plan be revised by the Forest Service to provide more protection for valuable fish and wildlife habitat and reflect recent research findings.

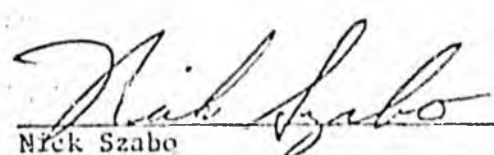
3. If information is not adequate to ensure the protection of fish and wildlife resources, then targeted timber outputs should be reduced by the Forest Service rather than risk permanent damage to these resources.
4. Research be expanded by both the Department of Fish and Game and the U. S. Forest Service to determine the effects of timber harvest on fish and wildlife habitat requirements, and as new information becomes available, results be incorporated in the Forest Service planning process.
5. In all future timber harvests by the State and U. S. Forest Service, timber stands of more than 50,000 board feet per acre not be cut and other volume classes be cut only in proportion to their occurrence.
6. Multiple use management of all resources be maintained by the U. S. Forest Service on the remaining lands not withdrawn for wilderness management nor selected by Native Corporations.
7. Any assessment of resource values by the U. S. Forest Service include a full economic and social analysis of fish and wildlife resources and their human use.
8. Selective cutting with techniques such as balloon and helicopter logging be considered by the U. S. Forest Service as an alternative to clearcutting.
9. The State Forest Practices Act be amended to adequately address wildlife concerns.
10. Major islands or management units as proposed for the Forest Service Regional Plan, whichever are smaller, should be used by the U. S. Forest Service as the basis for individual forest management planning units.



Gordon Jensen
Chairman, Joint Boards of Fisheries & Game



Samuel J. Harbo, Jr.
Chairman, Board of Game



Niek Szabo
Chairman, Board of Fisheries

ADOPTED: Anchorage, Alaska
December 7, 1989

VOTE: Adopted, 14 to 0

House Bill 132-Twelfth Legislature
Analysis and Proposed Amendments by
Cape Fox Corporation

MARCH 1981

The Cape Fox Corporation wishes to express some serious concerns we have if HB 132 passes as currently drafted.

Our suggested amendments are necessary to assure:

- the private landowner has the opportunity to participate in determinations made by the Department of Fish and Game.
- areas where timber rights are acquired are specifically defined;
- a timber owner is aware of "consideration" and "terms" prior to agreeing to give timber rights up;
- "other consideration" is of equivalent value to rights given up;
- criteria is established for determining "hazardous" effects of timber cutting and "fair" market value;
- "timely" payment, exchanges of land, etc., occur; and
- Action can begin by the state based on an offer by a private landowner related to land not meeting the fish concerns i. criteria 105a(1)

& (2):

As noted in our attached correspondence to Representative Osterback last session, we feel the legislation has merit and wholly support the concept if our concerns are adequately addressed. The following comments have been reviewed by our legal council and are offered as suggested amendments.

Section 1. We propose that subsection (a) (2) be amended:

- (1). to add after the words "fish and game" the words "provides written notice to the affected owner or owners of the timber of their intent to make a determination and"

This is necessary to make sure the timber owner is aware of a concern so that he may participate in the findings and plan effectively; and

- (2). to add after the words "timber cutting" the words "for a defined area" to assure the area considered hazardous to spawning, etc., is defined, thereby allowing timber cutting in other adjacent areas (i.e., up-river where timber cutting is determined to not be hazardous if conducted under certain forest practices).

In subsection (a) (3), we propose adding after the words "timber agrees" the words "under the terms and conditions offered in section 105(b) and (d)" to assure the timber owner is aware of the terms and considerations offered prior to agreeing to convey his rights. If this amendment were acceptable, there may be no need to maintain subsection (e) (2) of this section.

Also in subsection (a) (3), after the words "150 years," add the following words, "unless reevaluated under subsection (c) of this section, "to assure consistency under reevaluations provided for in subsection (c).

In subsection (a) and (c), we assume that criteria presently exists in statutes or regulations to properly define the terms used in this chapter, such as "hazardous" in line 13, p. 1, or "hazardous nature" in line 5, p. 2, which are no less restrictive than practices permitted under the Alaska Forest Practices Regulations. However, we request a definition be included in this chapter to assure consistency.

To permit the acquiring of timber rights by the state for land that does not fit the criteria in subsection (a) (1) and (2) of Section 105, we suggest that after (a) (3) that "; or" be added and subsection (a) (4) be included to read: "the owner of timber rights requests the state to acquire the rights":

In subsection (i) we ask that the following amendment be added to assure timber is properly valued and determined by a neutral third party. After the words "as determined" ~~STRIKE THE REMAINDER OF THE SENTENCE AND~~ add the following words "by a third party mutually agreed to by the Commissioner of Natural Resources and the owner of the timber to make the determination of fair market value under criteria agreed to by the Commissioner of Natural Resources and the owner of the timber."

In subsection (c), we ask that it be clearly under-

stood that reevaluations occur under the guidelines established in subsection (a) (1) and (2) of Section 105 by deleting everything beginning with the words "that the" in line 7, through "fish," in line 10 and adding the phrase "conditions (1) and (2) in subsection (a) of this section are not met to permit the state to acquire the right to cut and remove timber from private forest land." For clarification, after the word "paid" in line 13 add the words "or exchanged". Strike everything after the word "rights" in line 14 to avoid interest accumulation since the timber rights would be voluntarily given up by a private owner as a favor to the public and more rightly returned at its former value.

To assure that terms are satisfactory and that payments in money or "other considerations" are effected in a timely manner, the following amendments are requested. In subsection (d) (4) after the word "subsection" delete the "period" and add the following "so long as the payment and/or exchange terms are agreed to by the commissioner and the owner of the timber."

(2) BE DELETED (i) AND
We request that the existing subsection (h) be changed to (i) and the following subsection be substituted "(h)" acquisition of and full payment for timber cutting rights must take place by the end of the following regular legislative session or within one year of the date the owner of the timber rights is first advised in writing of the state's interest to acquire the right, whichever is later, or the timber owner shall be immediately compensated by an amount equal to 1.2 times the value of the timber determined under subsection (b) of this section."

Without a specific timeframe, acquisition could occur and a settlement follow (based on appropriation ^{and} concurrence of the legislature) at a later date causing significant economic loss to the private landowner. To assure that all costs incurred to permit the state to acquire these rights are paid by the state, we suggest the following sentence be added to the suggested amendment above: "All costs incurred by the state or by the landowner to effect acquisition of timber rights by the state under Sec. 105(a) (1) or (2) of this chapter shall be considered obligations of the state."

We would be very happy to discuss our concerns with any interested party.

April 25, 1980

Representative Osterback, Chairman
House Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

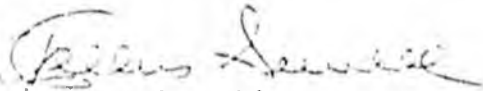
Dear Representative Osterback:

At the direction of Mr. Frank Seymour, Executive Vice President of Cape Fox Corporation, I would like to advise you of our position on HB 688.

We have reviewed this legislation in depth and note a number of problems, many of which have been noted in Sealaska's letter to you. However, we are very much in favor of retaining buffer zones around lakes and streams. Although the legislation has merit we do not feel it permits a trade for other land or purchase of land in buffer zones in a manner acceptable to Cape Fox Corporation.

We would be very happy to discuss our concerns with any interested party.

Sincerely,


Kellus Sewell
Legislative Agent
Cape Fox Corporation

cc: Frank Seymour
Cape Fox Corporation

Bob Loescher
Sealaska Corporation

Sub. Committee
Draft 5/15/81

Introduced: 2/6/81
Referred: Resources

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 HOUSE BILL NO. 132

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the commissioner of natural re-
7 sources to acquire certain timber cutting rights."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 41.17 is amended by adding a new section to read:

10 Sec. 41.17.105. ACQUISITION OF TIMBER RIGHTS. (a) If requested
11 by the commissioner of fish and game, the commissioner of natural re-
12 sources may acquire for the state the right to cut and remove timber
13 from private forest land if

14 (1) the timber is on land which is adjacent to a river,
15 lake, or stream specified under AS 16.05.870 as important to the spawn-
16 ing, rearing, or migration of anadromous fish;

17 *Provides written notice to the affected owner or owners of the timber of their intent to make*

18 (2) the commissioner of fish and game *for a defined area* finds that the timber
19 cutting *for a defined area* would be hazardous to the spawning, rearing or migration of
20 anadromous fish; and
21 *under the terms and conditions offered in Sec. 105(b) & (d) & (h)*

22 (3) the owner of the timber agrees *to convey* his right to
23 cut and remove the timber to the state for a term of not less than 30
24 *unless reevaluated under Subsection (c)* years or more than 150 years, which term shall be the period required
25 for regrowth of the timber after cutting as determined by the commis-
26 sioner of natural resources based on site and soil characteristics and
27 comparable periods for regrowth of timber in adjacent areas or in other
28 areas with similar geography and climate; *or*

29 (4) *The owner of timber rights requests the state to acquire the rights.*
(b) The money or other consideration offered for timber cutting
rights under this section shall equal the fair market value of the
timber cutting rights as determined by the commissioner of natural

Administrative

by a third party mutually agreed to by the Commissioner of Natural Resources and the owner of the timber to make the determination of fair market value under criteria agreed to by the Commissioner of Natural Resources and the owner of the timber.

(c) The commissioner of fish and game shall ~~regularly~~, and when requested by the owner of the land or by the former owner of the timber, ^{shall} reevaluate the importance of the adjacent waters for, or the hazardous nature of cutting timber acquired under this section to, the spawning, rearing, or migration of anadromous fish. ~~IF~~, upon reevaluation, the commissioner of fish and game determines ^{conditions (1) or (2)} ~~that the timber cutting activity is no longer hazardous to the spawning, rearing, or migration of anadromous fish or that the adjacent waters are no longer important to the spawning, rearing, or migration of anadromous fish,~~ ~~the former owner of the timber is entitled to repurchase the timber cutting rights from the Department of Natural Resources for consideration of the same value paid by the Department of Natural Resources for the timber cutting rights with annual interest at a reasonable rate determined by the commissioner of natural resources.~~ ^{current timber value exchanged}

(d) The commissioner of natural resources may acquire privately owned timber cutting rights under this section by

- (1) paying money;
- (2) exchanging state land or an interest in state land;
- (3) purchasing private or public land to exchange that land for the timber rights; and
- (4) using any combination of the methods described in (1) - (3) of this subsection ^{so long as the payment and/or exchange terms under subsection (b) or (h) of this chapter are agreed to by the Commissioner & the owner of the timber.}

(e) The commissioner of natural resources shall

- (1) advise the commissioner of fish and game on the performance of his duties under this section;
- (2) at least 120 days before the acquisition of timber cutting rights under this section, determine the consideration to be paid for those rights; and

1 (3) give public notice of the proposed exchange of state
2 land in the manner specified in AS 38.05.345 for the sale of state land
3 by public auction.

4 (f) AS 38.50 does not apply to an exchange of state land under
5 this section.

6 (g) If the value of a proposed acquisition of privately owned
7 timber cutting rights under (d) of this section exceeds \$1,000,000, the
8 timber cutting rights may not be acquired unless acquisition is ap-
9 proved by the legislature by concurrent resolution.

10 ^{insert (h)} This section does not authorize a state department or agency
11 to exercise the power of eminent domain to acquire land or timber cut-
12 ting rights for the protection of waters important to the spawning or
13 migration of anadromous fish.

14 (j) In this section,

15 (1) "owner of the timber" means a person who owns the right
16 to cut or harvest standing timber that may be acquired under this sec-
17 tion even if the person holds no other interest in the land on which
18 the timber is located;

19 (2) "timber cutting rights" or "right to cut or harvest
20 timber" means an assignable license together with an interest in the
21 standing timber held by the owner of the timber which allows the owner
22 of the timber or his assignee to enter upon the land on which the
23 timber is located to cut and remove the timber of commercial value.

16 (h) If there is an agreement to purchase timber cutting rights
17 between the commissioner of natural resources and the owner of timber
18 cutting rights, the state shall have 100 days from the date of the,
19 agreement to tender the consideration specified in the agreement. If
20 the state fails to tender the consideration within 100 days from the
21 date of the agreement, the state or the owner of the timber cutting
22 rights may terminate the agreement. If the state fails to tender the
23 consideration within 100 days from the date of the agreement, and
24 neither the state nor the owner of the timber cutting rights terminates
25 the agreement, the state shall pay the lawful rate of interest on the
26 consideration from the 100th day after the date of execution of the
27 agreement. All costs incurred by the state or by the

28 *landowner to effect acquisition of timber rights by the state*
29 *under (a)(1) or (2) of this section shall be considered*
obligations of the state and reimbursed under the
conditions above.

7:00

The Department shall annually submit to the Legislature ^{the} amount of funds needed to implement this ~~act~~ ^{section} before incurring costs under this section.

April 20, 1981

The Honorable Ben Grussendorf
Subcommittee Chairman
Resources Committee
State House of Representatives
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

RE: HOUSE BILL 132

Dear Representative Grussendorf:

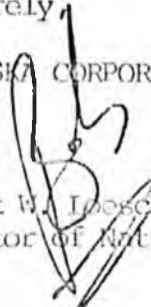
Please find enclosed our suggested revisions to HB132 as per our discussion during the hearing on this piece of legislation. These amendments have been reviewed by Cape Fox Corporation - Saxman, Alaska and have been concurred with by their lobbyist Kellus Sewell.

A recommendation to advance an appropriation bill to go along with the enabling legislation is enclosed. Our recommendation is that no more than \$500,000 be appropriated as an initial amount to the Anadromous Fish Protection Fund.

If we can be of further assistance, please advise us immediately.
Thanking you for this consideration.

Sincerely,

SEALASKA CORPORATION


Robert W. Loescher
Director of Natural Resources

Enclosures

cc: Representative Sally Smith
Representative Robert Bettisworth
Representative Mike Miller
Representative Terry Gardiner
Norm Staton
Byron Mallott

Introduced: _____
Referred: _____

Funding Information

General Fund _____
Other Funds _____

IN THE HOUSE

BY THE RESOURCES COMMITTEE

HOUSE BILL NO. _____
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act making an appropriation to the Department of Revenue for use by the Alaska Renewable Resources Corporation and other state agencies in acquiring timber cutting rights for the purpose of restoring and protecting anadromous fish streams in Alaska; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. The sum of \$ _____ is appropriated from the general fund to the Department of Revenue for the purchase of timber cutting rights adjacent to salmon streams in Alaska in accordance with AS 37.11.075 (Anadromous Fish Protection Fund).

* Section 2. On June 30, 1982, the unexpended and unobligated portion of the appropriation made by this Act will be deposited in accordance with AS 37.11.060.

* Section 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 2/6/81
Referred: Resources

IN THE HOUSE

BY THE RESOURCES COMMITTEE

HOUSE CS FOR HOUSE BILL NO. 132
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act authorizing the state of Alaska commissioner of natural resources to acquire certain timber cutting rights for the protection and restoration of anadromous fish."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 41.17 is amended by adding a new section to read:

Sec. 41.17.105. ACQUISITION OF TIMBER RIGHTS. (a) If requested by the commissioner of fish and game, the commissioner of natural resources in conjunction with the Alaska Renewable Resources Corporation may acquire for the state the right to cut and remove timber from private forest land if

(1) the timber is on land which is adjacent to a river, lake, or stream specified under AS 16.05.870 as important to the spawning, rearing, or migration of anadromous fish;

(2) the commissioner of fish and game provides written notice to the affected owner or owners of the timber of their intent to make a determination and finds that the timber cutting for a defined area would be hazardous to the spawning, rearing or migration of anadromous fish; and

(3) the owner of the timber agrees under the terms and conditions offered in Sec. 105(b) and (d) to convey its right to cut and remove the timber to the state for a term of not less than 30 years or more than 150 years, unless reevaluated under subsection (c) of this section, which term shall be the period required for regrowth of the timber after cutting as determined by the commissioner of natural resources based on site and soil characteristics and comparable periods for regrowth of timber in adjacent areas or in other areas with similar geography and climate; or

(4) the owner of timber rights requests the state to acquire the rights.

(b) The money or other consideration offered for timber cutting rights under this section shall equal the fair market value of the timber cutting rights as determined by a third party mutually agreed to by the commissioner of natural resources and the owner of the timber to make the determination of fair market value under criteria agreed to by the commissioner of natural resources and the owner of the timber.

(c) The commissioner of fish and game shall regularly, and when requested by the owner of the land or by the former owner of the timber, reevaluate the importance of the adjacent waters for, or the hazardous nature of cutting timber acquired under this section to, the spawning, rearing, or migration of anadromous fish. If, upon reevaluation, the commissioner of fish and game determines conditions (1) or (2) in subsection (a) of this section are not met to permit the state to acquire the right to cut and remove timber from private forest lands, the former owner of the timber is entitled to repurchase the timber cutting rights from the Department of Natural Resources for consideration of the same value paid or exchanged by the Department of Natural Resources for the timber cutting rights.

(d) The commissioner of natural resources may acquire privately owned timber cutting rights under this section by

(1) paying money from the Alaska Renewable

Resources Investment Fund (37.11.050.);

(2) exchanging state land or an interest in state land;

(3) purchasing private or public land to exchange that land for the timber rights;

(4) paying money from the general fund subject to legislative approval; and

4 (5) using any combination of the methods described in (1) - (4) of this subsection, so long as the payment and/or exchange terms under subsection (h) of this chapter are agreed to by the commissioner and the owner of the timber.

(e) The commissioner of natural resources shall

(1) advise the commissioner of fish and game on the performance of his duties under this section;

(2) at least 120 days before the acquisition of timber cutting rights under this section, determine the consideration to be paid for those rights;

(3) give public notice of the proposed exchange of state land in the manner specified in AS 38.05.345 for the sale of state land by public action; and

(4) work in conjunction with the Alaska Renewable Resources Corporation trustees to finance acquisition of timber necessary to rehabilitate, enhance, and develop anadromous fish streams as outlined in 37.11.070.

(f) AS 38.50 does not apply to an exchange of state land under this section.

(g) If the value of a proposed acquisition of privately owned timber cutting rights under (d) of this section exceeds \$1,000,000, the timber cutting rights may not be acquired unless acquisition is approved by the legislature by concurrent resolution.

(h) If there is mutual agreement as to the terms of the timber acquisition between the Department of Natural Resources, other affected agencies and the landowner, the state shall have 90 days to tender the agreed upon consideration specified in the agreement. Failure to proffer the agreed upon consideration within 90 days shall give the landowner the election of terminating the acquisition or completing the acquisition, provided, however, that the state shall pay the lawful rate of interest as set out in AS 45.45.010(a) or its successor statute computed against the purchase price or value of other consideration as of the date of execution of the written agreement, and this sum shall be paid in addition to the agreed upon consideration.

(i) This section does not authorize a state department or agency to exercise the power of eminent domain to acquire land on timber cutting rights for the protection of waters important to the spawning or migration of anadromous fish.

(J) In this section,

(1) "owner of the timber" means a person who owns the right to cut or harvest standing timber that may be acquired under this section even if the person holds no other interest in the land on which the timber is located;

(2) "timber cutting rights" or "right to cut or harvest timber" means an assignable license together with an interest in the standing timber held by the owner of the timber which allows the owner of the timber or his assignee to enter upon the land on which the timber is located to cut and remove the timber of commercial value.

* Section 2. AS 37.11 is amended by adding a new section to read:

Sec. 37.11.075. ANADROMOUS FISH PROTECTION FUND. (a)
There is created in the Alaska Renewable Resources Corporation (AS 37.12.010) the anadromous fish protection fund. The anadromous fish protection fund shall be administered by the board of the Alaska Renewable Resources Corporation which shall assist the Alaska Department of Fish and Game and Alaska Department of Natural Resources in acquiring certain timber rights for the long term restoration and rehabilitation of anadromous fish spawning areas. Protection of anadromous

fish spawning areas under this section may be financed only by appropriations of the legislature to the anadromous fish protection fund, as established herein.

(b) The board of trustees of the Alaska Renewable Resources Corporation may use money in the anadromous fish protection fund to finance acquisition of timber cutting rights in accordance with AS 37.11.070.

(c) The approval of the commissioners of natural resources and fish and game is required before approval of any expenditure of anadromous fish protection fund monies.

(d) Funds not expended under this section at the end of any fiscal year shall not lapse but instead be deposited in accordance with AS 37.11.060.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 22, 1981

SUBJECT: Timber cutting rights
(CSHB 132 (Resources))

TO: Representative Terry Gardiner
Representative Fred F. Zharoff
Co-Chairmen, House Resources Committee

FROM: Richard A. Bradley
Legislative Counsel *B*

The committee has requested a committee substitute for HB 132.

At the time that I did a draft committee substitute for Representative Grussendorf, I became concerned with the use of the defined terms in the bill. See subsec. (i) of HB 132 and subsec. (j) of this draft. Time did not then permit a review of the terms and an attempt to refine the usages. This draft committee substitute does contain those changes and I suggest that the committee review the draft with these changes in mind. I believe more precision is achieved by the changes.

Because some changes were made in the bill enclosed from the draft provided to us, an explanation of those changes is offered.

The committee has suggested a new paragraph (4) be added to subsection (a) of the bill to permit the owner of timber cutting rights to request the state to acquire the timber cutting rights. Because it seemed awkward to put the authorization for the owner to initiate the request at that point, I have modified the initial phrases of (a) to permit either the commissioner of fish and game or the owner to initiate efforts toward a purchase.

Representative Terry Gardiner
Representative Fred F. Zharoff
Page 2
May 22, 1981

The committee suggested in the draft subsec. (a)(3) that the agreement of the owner be "under the terms and conditions offered in subsecs. (b), (d), and (h)" of this section. I have deleted the phrase for several reasons. Since the state does not have the option of eminent domain unless it is affirmatively granted [to the extent that subsec. (j) is gratuitous and unnecessary], all aspects of the agreement of the owner are entirely voluntary. Tying that agreement to the provisions of the section is to that extent unnecessary.

But another reason for eliminating that language is that the stated provisions are not in fact describable as "terms and conditions". Moreover, both subsecs. (d) and (h) themselves require the consent of the owner to any agreement.

I have reworked subsec. (c) and I believe that it achieves the goals of the committee.

I have also shortened the provisions of subsec. (d)(4) consistently with the committee's goals.

Draft subsec. (h) is broken into two parts. The second part, subsec. (i), which consists of the handwritten material from the draft, has been reworked and is somewhat different from the request. I have deleted the requirement that the state consider as an obligation of the state the costs incurred by the state in achieving an agreement. That result is inevitable in the absence of law to the contrary.

But I have also limited the assumption of the state of the costs of the owner to those "costs determined by the commissioner to be reasonable costs of the owner of timber cutting rights necessary to achieve an agreement with the state . . ." and only then if an agreement for the purchase of timber cutting rights is achieved. Some limitation on the exposure of the state to the reasonable or unreasonable costs of the owner in the absence of a final agreement or even with a final agreement seemed required.

The remaining subsections of the bill are relettered.

RAB:ljb

Enclosure

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800


LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

June 2, 1981

SUBJECT: Timber cutting rights
(CSHB 132 (Resources))

TO: Representative Terry Gardiner

FROM: Richard A. Bradley 
Legislative Counsel

In the present version of CSHB 132 (Resources), I failed to include language responsive to your request; you had asked for language that

The department shall annually submit to the legislature the amount of funds needed to implement this section before incurring costs under this section.

I have responded to the request with new subsection (j).

Your request was susceptible to two interpretations:

- (1) the department may incur costs after requesting funds from the legislature; or
- (2) the department may not incur costs until it has received funds from the legislature.

While the latter version is constitutionally mandated (Article IX, section 3), nonetheless it constitutes reasonable legislative policy to prohibit executive agreements that limit legislative options.

I have accordingly used the second interpretation as the basis for my new subsection (j).

Please review to determine that I have achieved your goal.

RAB:ljb

Enclosure

April 25, 1980

Representative Osterback, Chairman
House Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Representative Osterback:

At the direction of Mr. Frank Seymour, Executive Vice President of Cape Fox Corporation, I would like to advise you of our position on HB 688.

We have reviewed this legislation in depth and note a number of problems, many of which have been noted in Sealaska's letter to you. However, we are very much in favor of retaining buffer zones around lakes and streams. Although the legislation has merit we do not feel it permits a trade for other land or purchase of land in buffer zones in a manner acceptable to Cape Fox Corporation.

We would be very happy to discuss our concerns with any interested party.

Sincerely,



Kellus Sewell
Legislative Agent
Cape Fox Corporation

cc: Frank Seymour
Cape Fox Corporation

Bob Loescher
Sealaska Corporation

ALASKA

STATE LEGISLATURE

MEMORANDUM

Section Analysis: HB 132
Subcommittee, Resources

- "An Act authorizing the commissioner of natural resources to acquire certain timber cutting rights."

Section 1.17.105. ACQUISITION OF TIMBER RIGHTS.

(a) 2 is amended to read, "the commissioner of fish and game provides written notice to the affected owner or owners of the timber of their intent to make a determination and finds that the timber cutting for a defined area would be hazardous to the spawning, rearing or migration of anadromous fish; and

This is necessary to make sure the timber owner is aware of a concern so that he may participate the findings and plan effectively.

(a) 3 is amended to read "the owner of the timber agrees under the terms and conditions offered in Sec. 105(b)&(d) to convey his right to cut and remove the timber to the state for a term of not less than 30 years or more than 150 years, unless re-evaluated under subsection(c) of this section, which term shall be....etc.

This change is proposed to assure the timber owner is aware of the terms and considerations offered prior to agreeing to convey his rights

NOTE. If this amendment is acceptable, there may be no need to maintain subsection (e) 2 of this section.

(a) 4 is added. The owner of timber rights requests the state to acquire the rights.

This subsection will permit the acquiring of timber rights by the state for land that does not fit the criteria in subsection (a) 1 and 2 of Section 105.

(b) is amended to read, "The money or other consideration offered for timber cutting rights under this section shall equal the fair market value of the timber cutting rights as determined by a third party mutually agreed to by the Commissioner of Natural Resources and the owner of the timber to make the determination of fair market value under criteria agreed to by the Commissioner of Natural Resources and the owner of the timber.

Section (c) beginning at line 7 is amended: "conditions (1) and (2) in subsection (a) of this section are not met to permit the state to acquire the right to cut and remove timber from private forest land." the former owner of the timber is entitled to repurchase the timber cutting rights from the Department of Natural Resources for consideration of the same value paid or exchanged by the Department of Natural Resources for the timber cutting rights.

This change makes it understood that re-evaluations occur under the guidelines established in subsection (a) 1 and 2. By deleting the last line, it avoids interest accumulation since the timber rights would be voluntarily given up by a private owner as a favor to the public and more rightly returned at its former value.

Subsection (d) 4 is amended by adding "so long as the payment and/or exchange terms are agreed to by the commissioner and the owner of the timber."

This assures terms are satisfactory and that payment whether in money or other considerations are effected in a timely manner.

A new subsection (h) is suggested: "...Acquisition of and full payment for timber cutting rights must take place by the end of the following regular legislative session or within one year of the date the owner of the timber rights is first advised in writing of the state's interest to acquire the right, whichever is later, or the timber owner shall be immediately compensated by an amount equal to 1.2 times the value of the timber determined under subsection (b) of this section...."

This addition adds a specific timeframe without which acquisition could occur and a settlement follow at a later date causing significant economic loss to the private landowner.

It is also suggested that "all costs incurred by the state or by the landowner to effect acquisition of timber rights by the state under Sec. 105(a) 1 or 2 of this chapter shall be considered obligations of the state" be added to this section.

The above additions make Subsection (h) relettered (i) and (i) relettered (j).

ALASKA

STATE LEGISLATURE

MEMORANDUM

Section Analysis: HB 132
Subcommittee, Resources

"An Act authorizing the commissioner of natural resources to acquire certain timber cutting rights."

Section 41.17.105. ACQUISITION OF TIMBER RIGHTS.

(a) 2 is amended to read, "the commissioner of fish and game provides written notice to the affected owner or owners of the timber of their intent to make a determination and finds that the timber cutting for a defined area would be hazardous to the spawning, rearing or migration of anadromous fish; and

This is necessary to make sure the timber owner is aware of a concern so that he may participate the findings and plan effectively.

(a) 3 is amended to read "the owner of the timber agrees under the terms and conditions offered in Sec. 105(b)&(d) to convey his right to cut and remove the timber to the state for a term of not less than 30 years or more than 150 years, unless re-evaluated under subsection(c) of this section, which term shall be....etc.

This change is proposed to assure the timber owner is aware of the terms and considerations offered prior to agreeing to convey his rights

NOTE: If this amendment is acceptable, there may be no need to maintain subsection (e) 2 of this section.

(a) 4 is added. The owner of timber rights requests the state to acquire the rights.

This subsection will permit the acquiring of timber rights by the state for land that does not fit the criteria in subsection (a) 1 and 2 of Section 105.

(b) is amended to read, "The money or other consideration offered for timber cutting rights under this section shall equal the fair market value of the timber cutting rights as determined by a third party mutually agreed to by the Commissioner of Natural Resources and the owner of the timber to make the determination of fair market value under criteria agreed to by the Commissioner of Natural Resources and the owner of the timber.

Section (c) beginning at line 7 is amended: "conditions (1) and (2) in subsection (a) of this section are not met to permit the state to acquire the right to cut and remove timber from private forest land." the former owner of the timber is entitled to repurchase the timber cutting rights from the Department of Natural Resources for consideration of the same value paid or exchanged by the Department of Natural Resources for the timber cutting rights.

This change makes it understood that re-evaluations occur under the guidelines established in subsection (a) 1 and 2. By deleting the last line, it avoids interest accumulation since the timber rights would be voluntarily given up by a private owner as a favor to the public and more rightly returned at its former value.

Subsection (d) 4 is amended by adding "so long as the payment and/or exchange terms are agreed to by the commissioner and the owner of the timber."

This assures terms are satisfactory and that payment whether in money or other considerations are effected in a timely manner.

A new subsection (h) is suggested: "...Acquisition of and full payment for timber cutting rights must take place by the end of the following regular legislative session or within one year of the date the owner of the timber rights is first advised in writing of the state's interest to acquire the right, whichever is later, or the timber owner shall be immediately compensated by an amount equal to 1.2 times the value of the timber determined under subsection (b) of this section...."

This addition adds a specific timeframe without which acquisition could occur and a settlement follow at a later date causing significant economic loss to the private landowner.

It is also suggested that "all costs incurred by the state or by the landowner to effect acquisition of timber rights by the state under Sec. 105(a) 1 or 2 of this chapter shall be considered obligations of the state" be added to this section.

The above additions make Subsection (h) relettered (i) and (i) relettered (j).

Introduced: 2/6/81
Referred: Resources

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 HOUSE BILL NO. 132

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the commissioner of natural re-
7 sources to acquire certain timber cutting rights."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 41.17 is amended by adding a new section to read:

10 Sec. 41.17.105. ACQUISITION OF TIMBER RIGHTS. (a) If requested
11 by the commissioner of fish and game, the commissioner of natural re-
12 sources may acquire for the state the right to cut and remove timber
13 from private forest land if

14 (1) the timber is on land which is adjacent to a river,
15 lake, or stream specified under AS 16.05.870 as important to the spawn-
16 ing, rearing, or migration of anadromous fish;

17 PROVIDES WRITTEN NOTICE TO THE AFFECTED OWNER OR OWNERS OF THE TIMBER OF THEIR
18 FOR A DEFINED AREA (2) the commissioner of fish and game finds that the timber
19 cutting would be hazardous to the spawning, rearing or migration of

20 anadromous fish; and

21 UNDER THE TERMS AND CONDITIONS OFFERED IN SEC. 105(G) AND

22 (3) the owner of the timber agrees to convey his right to
23 cut and remove the timber to the state for a term of not less than 30
24 UNLESS REEVALUATED UNDER SUBSECTION (C) OF THIS SECTION,
25 years or more than 150 years, which term shall be the period required
26 for regrowth of the timber after cutting as determined by the commis-
27 sioner of natural resources based on site and soil characteristics and
28 comparable periods for regrowth of timber in adjacent areas or in other
29 areas with similar geography and climate; OR

(b) The money or other consideration offered for timber cutting
rights under this section shall equal the fair market value of the
timber cutting rights as determined by the commissioner of natural

30 (a) (f) THE OWNER OF TIMBER RIGHTS REQUESTS THE STATE
TO ACQUIRE THE RIGHTS.

RESOURCES AND THE OWNER OF THE TIMBER TO MAKE THE DETERMINATION OF FAIR MARKET
VALUE UNDER CURRENT CRITERIA. AGREED TO BY THE COMMISSIONER OF NATURAL RESOURCES AND THE
OWNER OF THE TIMBER.

1 resources.

2 (c) The commissioner of fish and game shall regularly, and when
3 requested by the owner of the land or by the former owner of the
4 timber, reevaluate the importance of the adjacent waters for, or the
5 hazardous nature of cutting timber acquired under this section to, the
6 spawning, rearing, or migration of anadromous fish. If, upon reeval-

7 uation, the commissioner of fish and game determines ^{CONDITIONS (1) OR (2)} ~~that the timber~~
8 ~~cutting activity is no longer hazardous to the spawning, rearing, or~~ STATE
9 ~~migration of anadromous fish or that the adjacent waters are no longer~~
10 ~~important to the spawning, rearing, or migration of anadromous fish,~~
11 PRIVATE FOREST LANDS

12 the former owner of the timber is entitled to repurchase the timber
13 cutting rights from the Department of Natural Resources for considera-
14 tion of the same value paid ^{OR EXCHANGED} by the Department of Natural Resources for
15 the timber cutting rights, ~~with annual interest at a reasonable rate as~~
16 ~~determined by the commissioner of natural resources.~~

17 (d) The commissioner of natural resources may acquire privately
18 owned timber cutting rights under this section by

- 19 (1) paying money;
- 20 (2) exchanging state land or an interest in state land;
- 21 (3) purchasing private or public land to exchange that land
22 for the timber rights; and
- 23 (4) using any combination of the methods described in (1) -

24 (3) of this subsection, ^{SO LONG AS THE PAYMENT AND/OR EXCHANGE TERMS UNDER}
25 ^{SUBSECTION (4) OF THIS CHAPTER ARE AGREED TO BY THE COMMISSIONER AND THE}
26 ^{OWNER OF THE TIMBER.}

27 (e) The commissioner of natural resources shall
28 (1) advise the commissioner of fish and game on the perfor-
29 mance of his duties under this section;

(2) at least 120 days before the acquisition of timber cut-
ting rights under this section, determine the consideration to be paid
for those rights; and

1 (3) give public notice of the proposed exchange of state
2 land in the manner specified in AS 38.05.345 for the sale of state land
3 by public auction.

4 (f) AS 38.50 does not apply to an exchange of state land under
5 this section.

6 (g) If the value of a proposed acquisition of privately owned
7 timber cutting rights under (d) of this section exceeds \$1,000,000, the
8 timber cutting rights may not be acquired unless acquisition is ap-
9 proved by the legislature by concurrent resolution.

10 (h) (i) This section does not authorize a state department or agency
11 to exercise the power of eminent domain to acquire land or timber cut-
12 ting rights for the protection of waters important to the spawning or
13 migration of anadromous fish.

14 (j) (1) In this section,

15 (1) "owner of the timber" means a person who owns the right
16 to cut or harvest standing timber that may be acquired under this sec-
17 tion even if the person holds no other interest in the land on which
18 the timber is located;

19 (2) "timber cutting rights" or "right to cut or harvest
20 timber" means an assignable license together with an interest in the
21 standing timber held by the owner of the timber which allows the owner
22 of the timber or his assignee to enter upon the land on which the
23 timber is located to cut and remove the timber of commercial value.

24 (h.) ACQUISITION OF AND FULL PAYMENT FOR TIMBER CUTTING RIGHTS MUST TAKE
25 PLACE BY THE END OF THE FOLLOWING REGULAR LEGISLATIVE SESSION OR
26 WITHIN ONE YEAR OF THE DATE THE OWNER OF THE TIMBER RIGHTS IS
27 FIRST ADVISED IN WRITING OF THE STATE'S INTEREST TO ACQUIRE THE
28 RIGHT, WHICHEVER IS LATER, OR THE TIMBER OWNER SHALL IMMEDIATELY
29 COMPENSATED BY AN AMOUNT EQUAL TO 1.2 TIMES THE VALUE OF THE
TIMBER DETERMINED UNDER SUBSECTION (f) OF THIS SECTION. ALL COSTS
INCURRED BY THE STATE OR BY THE LANDOWNER TO EFFECT ACQUISITION
OF TIMBER RIGHTS BY THE STATE UNDER SEE. 105 (a)(1) OR (2) OF
THIS CHAPTER SHALL BE CONSIDERED OBLIGATIONS OF THE STATE.

Introduced: 2/6/81
Referred: Resources

1 IN THE HOUSE

BY THE RESOURCES COMMITTEE

2 HOUSE BILL NO. 132

3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act authorizing the commissioner of natural re-
7 sources to acquire certain timber cutting rights."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 41.17 is amended by adding a new section to read:

10 Sec. 41.17.105. ACQUISITION OF TIMBER RIGHTS. (a) If requested
11 by the commissioner of fish and game, the commissioner of natural re-
12 sources may acquire for the state the right to cut and remove timber
13 from private forest land if

14 (1) the timber is on land which is adjacent to a river,
15 lake, or stream specified under AS 16.05.870 as important to the spawn-
16 ing, rearing, or migration of anadromous fish;

17 (2) the commissioner of fish and game finds that the timber
18 cutting would be hazardous to the spawning, rearing or migration of
19 anadromous fish; and

20 (3) the owner of the timber agrees to convey his right to
21 cut and remove the timber to the state for a term of not less than 30
22 years or more than 150 years, which term shall be the period required
23 for regrowth of the timber after cutting as determined by the commis-
24 sioner of natural resources based on site and soil characteristics and
25 comparable periods for regrowth of timber in adjacent areas or in other
26 areas with similar geography and climate.

27 (b) The money or other consideration offered for timber cutting
28 rights under this section shall equal the fair market value of the
29 timber cutting rights as determined by the commissioner of natural

1 resources.

2 (c) The commissioner of fish and game shall regularly, and when
3 requested by the owner of the land or by the former owner of the
4 timber, reevaluate the importance of the adjacent waters for, or the
5 hazardous nature of cutting timber acquired under this section to, the
6 spawning, rearing, or migration of anadromous fish. If, upon reeval-
7 uation, the commissioner of fish and game determines that the timber
8 cutting activity is no longer hazardous to the spawning, rearing, or
9 migration of anadromous fish or that the adjacent waters are no longer
10 important to the spawning, rearing, or migration of anadromous fish,
11 the former owner of the timber is entitled to repurchase the timber
12 cutting rights from the Department of Natural Resources for considera-
13 tion of the same value paid by the Department of Natural Resources for
14 the timber cutting rights with annual interest at a reasonable rate as
15 determined by the commissioner of natural resources.

16 (d) The commissioner of natural resources may acquire privately
17 owned timber cutting rights under this section by

- 18 (1) paying money;
- 19 (2) exchanging state land or an interest in state land;
- 20 (3) purchasing private or public land to exchange that land
21 for the timber rights; and
- 22 (4) using any combination of the methods described in (1) -
23 (3) of this subsection.

24 (e) The commissioner of natural resources shall

- 25 (1) advise the commissioner of fish and game on the perfor-
26 mance of his duties under this section;
- 27 (2) at least 120 days before the acquisition of timber cut-
28 ting rights under this section, determine the consideration to be paid
29 for those rights; and

1 (3) give public notice of the proposed exchange of state
2 land in the manner specified in AS 38.05.345 for the sale of state land
3 by public auction.

4 (f) AS 38.50 does not apply to an exchange of state land under
5 this section.

6 (g) If the value of a proposed acquisition of privately owned
7 timber cutting rights under (d) of this section exceeds \$1,000,000, the
8 timber cutting rights may not be acquired unless acquisition is ap-
9 proved by the legislature by concurrent resolution.

10 (h) This section does not authorize a state department or agency
11 to exercise the power of eminent domain to acquire land or timber cut-
12 ting rights for the protection of waters important to the spawning or
13 migration of anadromous fish.

14 (i) In this section,

15 (1) "owner of the timber" means a person who owns the right
16 to cut or harvest standing timber that may be acquired under this sec-
17 tion even if the person holds no other interest in the land on which
18 the timber is located;

19 (2) "timber cutting rights" or "right to cut or harvest
20 timber" means an assignable license together with an interest in the
21 standing timber held by the owner of the timber which allows the owner
22 of the timber or his assignee to enter upon the land on which the
23 timber is located to cut and remove the timber of commercial value.
24
25
26
27
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29

Bud Simpson

April 20, 1981

The Honorable Ben Grussendorf
Subcommittee Chairman
Resources Committee
State House of Representatives
Alaska State Legislature
Pouch V
State Capitol
Juneau, Alaska 99811

RE: HOUSE BILL 132

Representative Grussendorf:

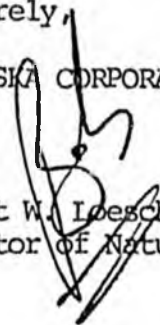
Please find enclosed our suggested revisions to HB132 as per our discussion during the hearing on this piece of legislation. These amendments have been reviewed by Cape Fox Corporation - Saxman, Alaska and have been concurred with by their lobbyist Kellus Sewell.

A recommendation to advance an appropriation bill to go along with the enabling legislation is enclosed. Our recommendation is that no more than \$500,000 be appropriated as an initial amount to the Anadromous Fish Protection Fund.

If we can be of further assistance, please advise us immediately. Thanking you for this consideration.

Sincerely,

SEALASKA CORPORATION


Robert W. Loescher
Director of Natural Resources

Enclosures

cc: Representative Sally Smith
Representative Robert Bettisworth
Representative Mike Miller
Representative Terry Gardiner
Norm Staton
Byron Mallott

SEALASKA CORPORATION ONE Sealaska Plaza, Juneau, Alaska 99801 Phone (907) 586-1312

Introduced: _____
Referred: _____

Funding Information

General Fund _____
Other Funds _____

IN THE HOUSE

BY THE RESOURCES COMMITTEE

HOUSE BILL NO. _____
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled:

"An Act making an appropriation to the Department of Revenue for use by the Alaska Renewable Resources Corporation and other state agencies in acquiring timber cutting rights for the purpose of restoring and protecting anadromous fish streams in Alaska; and providing for an effective date."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

- * Section 1. The sum of \$ _____ is appropriated from the general fund to the Department of Revenue for the purchase of timber cutting rights adjacent to salmon streams in Alaska in accordance with AS 37.11.075 (Anadromous Fish Protection Fund).
- * Section 2. On June 30, 1982, the unexpended and unobligated portion of the appropriation made by this Act will be deposited in accordance with AS 37.11.060.
- * Section 3. This Act takes effect immediately in accordance with AS 01.10.070(c).

Introduced: 2/6/81
Referred: Resources

IN THE HOUSE

BY THE RESOURCES COMMITTEE

HOUSE CS FOR HOUSE BILL NO. 132
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE - FIRST SESSION
A BILL

For an Act entitled: "An Act authorizing the state of Alaska commissioner of natural resources to acquire certain timber cutting rights for the protection and restoration of anadromous fish."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 41.17 is amended by adding a new section to read:

Sec. 41.17.105. ACQUISITION OF TIMBER RIGHTS. (a) If requested by the commissioner of fish and game, the commissioner of natural resources in conjunction with the Alaska Renewable Resources Corporation may acquire for the state the right to cut and remove timber from private forest land if

(1) the timber is on land which is adjacent to a river, lake, or stream specified under AS 16.05.870 as important to the spawning, rearing, or migration of anadromous fish;

(2) the commissioner of fish and game provides written notice to the affected owner or owners. of the timber of their intent to make a determination and finds that the timber cutting for a defined area would be hazardous to the spawning, rearing or migration of anadromous fish; and

(3) the owner of the timber agrees under the terms and conditions offered in Sec. 105(b) and (d), to convey its right to cut and remove the timber to the state for a term of not less than 30 years or more than 150 years, unless reevaluated under subsection (c) of this section, which term shall be the period required for regrowth of the timber after cutting as determined by the commissioner of natural resources based on site and soil characteristics and comparable periods for regrowth of timber in adjacent areas or in other areas with similar geography and climate; or

(4) the owner of timber rights requests the state to acquire the rights.

(b) The money or other consideration offered for timber cutting rights under this section shall equal the fair market value of the timber cutting rights as determined by a third party mutually agreed to by the commissioner of natural resources and the owner of the timber to make the determination of fair market value under criteria agreed to by the commissioner of natural resources and the owner of the timber.

(c) The commissioner of fish and game shall regularly, and when requested by the owner of the land or by the former owner of the timber, reevaluate the importance of the adjacent waters for, or the hazardous nature of cutting timber acquired under this section to, the spawning, rearing, or migration of anadromous fish. If, upon reevaluation, the commissioner of fish and game determines conditions (1) or (2) in subsection (a) of this section are not met to permit the state to acquire the right to cut and remove timber from private forest lands, the former owner of the timber is entitled to repurchase the timber cutting rights from the Department of Natural Resources for consideration of the same value paid or exchanged by the Department of Natural Resources for the timber cutting rights.

(d) The commissioner of natural resources may acquire privately owned timber cutting rights under this section by

(1) paying money from the Alaska Renewable

Resources Investment Fund (37.11.050.);

(2) exchanging state land or an interest in state land;

(3) purchasing private or public land to exchange that land for the timber rights;

(4) paying money from the general fund subject to legislative approval; and

(5) using any combination of the methods described in (1) - (4) of this subsection, so long as the payment and/or exchange terms under subsection (h) of this chapter are agreed to by the commissioner and the owner of the timber.

(e) The commissioner of natural resources shall

(1) advise the commissioner of fish and game on the performance of his duties under this section;

(2) at least 120 days before the acquisition of timber cutting rights under this section, determine the consideration to be paid for those rights;

(3) give public notice of the proposed exchange of state land in the manner specified in AS 38.05.345 for the sale of state land by public action; and

(4) work in conjunction with the Alaska Renewable Resources Corporation trustees to finance acquisition of timber necessary to rehabilitate, enhance, and develop anadromous fish streams as outlined in 37.11.070.

(t) AS 38.50 does not apply to an exchange of state land under this section.

(g) If the value of a proposed acquisition of privately owned timber cutting rights under (d) of this section exceeds \$1,000,000, the timber cutting rights may not be acquired unless acquisition is approved by the legislature by concurrent resolution.

New & diff

(h) If there is mutual agreement as to the terms of the timber acquisition between the Department of Natural Resources, other affected agencies and the landowner, the state shall have 90 days to tender the agreed upon consideration specified in the agreement. Failure to proffer the agreed upon consideration within 90 days shall give the landowner the election of terminating the acquisition or completing the acquisition, provided, however, that the state shall pay the lawful rate of interest as set out in AS 45.45.010(a) or its successor statute computed against the purchase price or value of other consideration as of the date of execution of the written agreement, and this sum shall be paid in addition to the agreed upon consideration.

(i) This section does not authorize a state department or agency to exercise the power of eminent domain to acquire land on timber cutting rights for the protection of waters important to the spawning or migration of anadromous fish.

(J) In this section,

(1) "owner of the timber" means a person who owns the right to cut or harvest standing timber that may be acquired under this section even if the person holds no other interest in the land on which the timber is located;

(2) "timber cutting rights" or "right to cut or harvest timber" means an assignable license together with an interest in the standing timber held by the owner of the timber which allows the owner of the timber or his assignee to enter upon the land on which the timber is located to cut and remove the timber of commercial value.

* Section 2. AS 37.11 is amended by adding a new section to read:

Sec. 37.11.075. ANADROMOUS FISH PROTECTION FUND. (a) There is created in the Alaska Renewable Resources Corporation (AS 37.12.010) the anadromous fish protection fund. The anadromous fish protection fund shall be administered by the board of the Alaska Renewable Resources Corporation which shall assist the Alaska Department of Fish and Game and Alaska Department of Natural Resources in acquiring certain timber rights for the long term restoration and rehabilitation of anadromous fish spawning areas. Protection of anadromous

fish spawning areas under this section may be financed only by appropriations of the legislature to the anadromous fish protection fund, as established herein.

(b) The board of trustees of the Alaska Renewable Resources Corporation may use money in the anadromous fish protection fund to finance acquisition of timber cutting rights in accordance with AS 37.11.070.

(c) The approval of the commissioners of natural resources and fish and game is required before approval of any expenditure of anadromous fish protection fund monies.

(d) Funds not expended under this section at the end of any fiscal year shall not lapse but instead be deposited in accordance with AS 37.11.060.