

H B

742

COMMITTEE REPORT

HOUSE

FURTHER:

(7)

2/8/82

Date: April 15, 1982

Mr. Speaker:

The Committee on RESOURCES has had HB 742

"An Act relating to the mineral interest in state land; and providing for an effective date."

under consideration and ~~by 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 742 (RESOURCES)  same title  
 new title  
 and recommends <sup>gives</sup> individual recommendations
- AND attaches a "Letter of Intent"  New Fiscal Note
- reports it back without recommendation
- referred to the \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

[Signature]

[Signature]

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MEMBERS HAVING  
OTHER RECOMMENDATIONS:

[Signature] (NO REC)

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\_\_\_\_\_

\_\_\_\_\_

[Signature]  
CHAIRMAN

# STATE OF ALASKA

## DEPARTMENT OF FISH AND GAME

### OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

P.O. BOX 3-2000  
JUNEAU, ALASKA 99802  
PHONE: 465-4100

March 19, 1982

Representative Dick Randolph  
Chairman  
Administrative Regulation Review Committee  
Alaska State Legislature  
Pouch V, State Capital  
Juneau, AK 99811

Dear Representative Randolph:

I was both surprised and disappointed at the Administrative Regulation Review Committee's conclusions regarding Alaska's salmon fisheries as contained in your letter of March 12, 1982. Your conclusions and recommendations reflect the Committee's serious lack of knowledge concerning the fisheries, the management program, the regulatory process, and the difficult problems being faced by both the Board of Fisheries and the Department in trying to protect the stocks and provide for the most equitable harvest.

In particular, your generalized statements regarding shortcomings in our data base ignore the fact that management and allocation decisions must be made if there is to be any resource management. The demands for common property resources are increasingly complex and allocation decisions are based on the best available information.

Your suggestions regarding the need for more and better research, fish camps, stream escapements, etc., certainly are true, yet more money would be needed for any significant change in management effectiveness. Budget appropriations for such activities always have been inadequate. The bulk of our expenditures by necessity must be directed to the day-to-day management of the various fisheries (e.g., salmon, herring, crab, etc.) in order to control the harvest efforts and protect the stocks from overfishing.

Your findings and recommendations focused on the regulations controlling the commercial troll fishery off Alaska. However, the Committee chose to stress only the inconvenience and burdens that various management measures have placed on fishermen with no recognition of the very real resource problems involved and the highly complex

March 19, 1982

management problems facing the staff. Your letter makes no mention of increases in the effort and over-capitalization of the Troll fleet that has occurred in recent years which dilute the effects of any regulation that is enacted. The major regulation changes for the Troll fishery that the Board adopted for 1981 were aimed at establishing a long-term rebuilding program for our Southeastern Alaska chinook stocks. As you are probably aware other user groups have had restrictions placed on them earlier to help accomplish this goal. Targeted net fisheries were eliminated in the mid-1970's and spring sport-fishing closures around Juneau, Wrangell, and Ketchikan have been in place at least as long. In response to the specific points raised in your letter, my staff has prepared the discussion which follows.

I. "The Department of Fish and Game lacks accountability for its management decisions. The ARRC suggests more input from fishermen in the decision making process."

In regards to "accountability", the staff of the Department of Fish and Game through the annual public review of fisheries regulation and management provided by the Board of Fisheries undergo a much more thorough review of their actions than most fisheries managers, and indeed most State, Municipal, and Federal managers. The public has ready access to the Board and the Department. Commercial fishermen leave no stone unturned where regulation of their livelihood is concerned. The Commissioner's Office and the Department's senior staff review all proposed staff regulatory actions both long-term and inseason to insure that they are based on the best available data and on sound rationale.

The Board process provides members of the public and industry representatives more access to the regulatory system than any other regulation forming process in the State and on the entire Pacific coast. Regulations proposed by the staff to the Board undergo the same public review and scrutiny by the Board as proposals submitted by members of the public. Staff proposals are based primarily on resource considerations and are often modified by logistical and social considerations raised during public review. This process is a healthy one. Such a review of staff and public proposals should continue, providing all user groups with their say. The staff should not simply subject their proposals to review by special interest groups that may not represent the public as whole before submission to the Board.

a) "Regional forums should be held...."

The present Local Fish and Game Advisory Committees scattered throughout the State--some 70 in all--do provide the "forums" your committee is suggesting to discuss management problems among themselves and Department staff and to prepare regulatory proposals. In addition the Chairman of all the committees are present at the regulatory sessions of the Board of Fisheries to present their views directly prior to the adoption of any regulation. The Department's staff also provides inseason informational updates to keep fishermen informed of current developments in the fisheries and information concerning inseason regulatory changes needed to expand or restrict the fishing effort, depending on the strength of the runs.

b) "There should be a group representing the industry during all Board of Fisheries deliberations...."

That opportunity exists at present, and the "industry" does testify before the Board on all issues for which it has concern. Whether or not they choose to present any testimony, however, is entirely their prerogative, as is true with any interest group. The Board does provide for such participation.

II. "Management decisions are made without realistic or substantiated knowledge of river escapements."

The Troll fisheries operate on mixed stocks of salmon at great distances from their natal streams, and therefore no inseason management based on escapement counts is possible. The primary limitation to conducting extensive coho escapement surveys is the lack of funding to transport personnel to remote streams. Realistically, many large producing systems cannot be weired because of floods, and the stream basins are so extensive that ground surveys are not feasible. We rely on index systems where surveys can be conducted annually with a fair degree of certainty. Because the Troll fishery wholly cannot be managed for individual stream systems, it is questionable whether the funding of a massive effort to greatly increase escapement surveys, especially of coho salmon, is questionable. Volunteers could be used only if arrangements could be made to assign them to a project for a specific period of time to conduct coordinated surveys or to man weirs. Otherwise, random and uncomparable data may be generated. In point of fact, cooperative escapement surveys have been conducted with the Regional Aquaculture Associations in Southeastern.

III. "Management decisions are made without realistic knowledge of migration patterns of fish stocks."

The research conducted at Little Port Walter should be continued, and any stock separation techniques with promise should be pursued. Department migration studies have been difficult to initiate and to maintain because of insufficient funding. We would like very much to expand our efforts on this very important type of research to establish the various techniques that will provide the management tool we need to identify different stocks of salmon.

IV. "Fish ticket information is unreliable....suggests this program be supplemented with an extension of the already existing Troll Log Book program."

The argument that fish tickets are not accurate is an old one. The fish ticket information is generated by fishermen and processors and, in fact, is required by regulation. If fishermen want the fish tickets to provide the Department accurate information, they need to make a sincere effort to provide correct information to processors and make sure it is recorded on the tickets. It is a violation not to record numbers of fish on a troll ticket. Other sources of information are certainly welcome, but must be timely and detailed. The staff is working with the Alaska Trollers Association to set up a pilot reporting system directly from vessels on the grounds. This type of reporting could give managers a better fix on fishing pattern changes before vessels unload their catches.

V. "The OY is a managerial tool established by the Department of Fish and Game on the basis of non-substantiated data...the ten year average does not take into consideration vital stock statistics regarding past foreign fishing within the Alaskan FCZ and stock improvements since 1980."

The OY was developed by the North Pacific Fisheries Management Council and currently serves as a ceiling for our Southeastern chinook fishery. Because many chinook stocks (including most of our own) are depressed, the level of harvest allowed in the Troll fishery on this species is partially a socioeconomic decision the Council and Board have made. If the Troll fishery depended only on the depressed Alaskan stocks the fishery would be drastically restricted, as was Bristol Bay during poor red runs. The conservation of coastwide chinook stocks is complicated by the fact that many fisheries to the south (British Columbia, Washington, Oregon) share in the harvest and the Board and

the Council must weigh all conservation efforts and harvesting against actions in our own fishery--which depends on non-Alaskan stocks to large degree for the present level of harvest. Specific recommendations for OY adjustments should be taken to the Board and the Council for their consideration. Incidentally, the Board already has adopted the concept that the Alaskan hatchery contribution to our chinook fishery will not be included in the OY.

VI. "The 8 and 6 closure policy...impose an unnecessary hardship on fishermen in the Icy Straits area."

The "8 and 6 fishing" pattern in Icy Strait is a conservation measure to protect in-migrating coho and chinook salmon. It does not differentiate between hand and power troll gear and is not related to the OY. Because the stocks migrating through this area are fully utilized, any relaxing of the regulation would require a reduction of Trolling effort in outside Trolling areas or reducing inside net and sport fisheries which already have been impacted by the Troll effort. The "8 and 6" regulation intends to allow more fish to make it through to the the inside waters and provide for better escapement.

VII. "The prohibition of sport fishing from troll vessels is an unnecessary and discriminatory regulation."

The prohibition of sport fishing from commercial trollers has definite enforcement value in areas closed to trolling or during troll closures generally, in helping to prevent the illegal harvest and sale of fish caught by "presumed sportfishermen". In open trolling areas the regulation is more allocative in nature in that it discourages increased participation in the hand troll fishery. As it currently stands this regulation also tends to "protect" full-time commercial trollers from competition by "weekend warriors". Because of the high number of entry permits being issued in the hand troll fishery, (2,150), this regulation and the rather depressed economics of the fishery were probably the key factors in the lowering of the numbers of fishermen participating in the fishery. Many more than 2,150 fishermen were available to fish under the "interim use permit" moratorium for 1980 and 1981, but only 1637 and about 1200 actually fished in these two years, respectively.

VIII. "Mismanagement by incompetent staff...."

I must take exception to the charges leveled against the staff by your committee. The Troll fishery is the most

complex in the State and extensive management of the fishery has occurred only for the past two seasons. The 6% undershooting of the Board-mandated chinook O.Y. of 285,000 is small compared to the variations in most harvests that are managed for specific levels. Indeed, most harvest levels are expressed as fairly broad ranges and not a specific point. Your committee received testimony that would lead one to believe that the staff simply has to add-up fish tickets mechanically and close fishing when the O.Y. is reached. Actually, decisions have to be based on projections of fish caught, on vessels still fishing, and on potential catches between the time a closure is announced and the actual closing date. Obviously, catch rates can be affected by availability of other species, weather, effort, chinook availability over a wide range of areas and fleet distribution. Reaching the precise OY figures in the actual harvest is not a simple task. Experience will improve what I consider an already satisfactory performance under the circumstances.

Those who felt disadvantaged by a reasonable management error probably would not have complained had we overshot the chinook O.Y. by 6%. In 1980 we overshot the O.Y. by only 1%! Regarding your suggestion on replacing "any staff members who are not professionally capable", I can only agree. However, we do have a very competent staff, and I seldom have had to acknowledge the existence of that problem. When it becomes evident, I can assure you that I will take action. I have no tolerance whatsoever for incompetence!

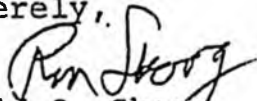
In summary, I certainly can understand the concern by your committee to ensure that unpopular regulations are well justified. However, I do not believe that the staff members who have been drawn into the complex Troll fishery management problems should become the focal point for political pressure generated by fishermen's frustrations. In fact, these same staff members lead the effort to provide the Board, Council, and USA/Canada Treaty Negotiator the information necessary to insure that our fisheries are placed in the best position possible. However, indiscriminate actions involving O.Y. adjustments could invite attention from entities over which the Board,

The Honorable Rep. Randolph -7-

March 10, 1982

Council, and Legislature have no control. Management of our fisheries by the courts certainly will not benefit Alaskan user groups.

Sincerely,



Ronald O. Skoog  
Commissioner

cc: Alaska Board of Fisheries  
S.E. Advisory Committee Chairman  
House and Senate Finance Committees  
House and Senate Resource Committees

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

March 25, 1982

OFFICE OF THE COMMISSIONER

POUCH M  
JUNEAU, ALASKA 99811  
PHONE:

The Honorable Kenneth Fanning  
Co-Chairman, House Resources Committee  
House of Representatives  
Pouch "V"  
Juneau, Alaska 99811

ENTERED MAR 26 1982

Re: HB 742 "An Act Relating to the  
Mineral Interest on State Land"

Dear Representative *Kenn* Fanning:

I would appreciate your Committee's consideration of the recommendations of this Department on HB 742. The act would eliminate the requirement of existing State law which mandates reservation of subsurface rights by the State, and would replace that mandate with one which allows for retention of subsurface rights only if the lands were believed to contain minerals at the time of selection. Unfortunately, the bill could create several new problems for those interested in forwarding mineral development in Alaska while solving few existing problems.

We do not object to the bill from a philosophical point of view. Further, there can be little question that in certain other parts of the country, split estate problems have retarded prudent land management and use. Fortunately, except in isolated situations, this has not been the case in Alaska. Accordingly, for the reasons indicated here, we believe that the cure proposed in HB 742 is more harmful than the disease, particularly in this year of budgetary constraints, and at a time when the land ownership situation in Alaska is finally being settled after years of constant turmoil. At some subsequent time, but not for the foreseeable future, the enactment of HB 742 might resolve more problems than it would create.

Section 6(i) of the Statehood Act requires the State to retain ownership of "mineral lands." During the past two years, considerable effort has been devoted to understanding the practical implication of this requirement by the mining community, the Attorney General's office, and this Department. We have stated our unwillingness to impose any "solution" on the miners, but have supported efforts from

The Honorable Kenneth Fanning  
March 25, 1982  
Page 2

within that community to address the problem, such as this year's SB 732 (production licenses).

A fundamental flaw of HB 742 is the fact that determinations of mineral potential have never been formally made as part of the State's land selection process. The ability of the Department to accurately make such a determination is extremely questionable. Given the State's huge land base, the quality of information currently available for determining mineral potential on state lands is inconsistent and incomplete. The "non-mineral" lands of yesterday and today can contain the world-class deposits of tomorrow. The standards for making determinations of mineral character are unclear; any standard that the state would use would not be binding on the federal government.

The bill would create two practical problems in addition to the fundamental defect cited above. First, it could result in a prospective miner having to deal with a variety of landowners for a single group of claims. Tracing ownership on lands not owned by the State would be a time consuming and expensive process. For example, a miner attempting to stake a series of claims might need to conduct several title searches. Similar problems could arise for other potential users of the subsurface estate.

The requirement that the State determine which lands are "mineral lands," and convey the subsurface estate whenever possible would impose significant administrative burden on the Department. As you are aware, current mining activities already have our staff working at or beyond their capacity. If the bill is seriously considered by the Committee, a fiscal note for this Department should be sought. Geologic, archival and administrative time and expertise would all be needed to carry out the purposes of the Act.

The bill would create uncertainty as to the State's compliance with the terms of Section 6(i) of the Statehood Act. In the view of certain respected legal scholars, any transfer of the subsurface interests of the State would result in forfeiture of those state selections. Because the state standards for determining mineral lands are not binding on the federal government, any conveyance of subsurface interests by the state could later be clouded by the federal government. Historically, use of the mineral lands criteria in federal statutes resulted in clouded titles and a variety of other problems and was therefore subsequently respected.

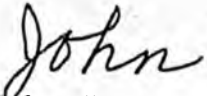
The Honorable Kenneth Fanning  
March 25, 1982  
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The Attorney General has pointed out the fact that, to date,

"the State has complied with the essential spirit of the large part of the 6(i) purpose; namely, preventing a large land giveaway through the guise of mineral locations leading to eventual patent of both the surface and the subsurface." (Final opinion of the Attorney General, re: Status of Mining Claims on State Selected Lands, October 20, 1981.)

Thank you for the opportunity to provide comments to you on HB 742. If you have any questions, I would be glad to discuss these issues in further detail.

Sincerely,



John W. Katz  
Commissioner

cc: Representative Richard Randolph  
Senator Bettye Fahrenkamp  
Wilson Condon, Attorney General  
Keith Specking, Legislative Assistant

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 742 (Res.)  
 Title An Act relating to the mineral interest in state land  
 Requested by House Resources Date 4/3/82

II. FISCAL DETAIL

Agency Affected Department of Natural Resources  
 Program Category Affected NRMEC  
 BRU, Program, or Subprogram(s) Affected Management and Administration  
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)  
EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES			69.8	75.0		
200 TRAVEL						
300 CONTRACTUAL			3000.0			
400 COMMODITIES			10	11		
500 EQUIPMENT			2.5	2.7		
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC.						
<b>TOTAL</b>			<b>3,082.3</b>	<b>88.7</b>		

FUNDING (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
GENERAL FUND			3,082.3	88.7		
FEDERAL FUNDS						
OTHER (Specify Fund Source)						

POSITIONS

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
FULL TIME			2	2		
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Attached

IV. DATE April 4, 1982 PREPARED BY Joe Burch, Deputy Director, Div. of Technical Services  
 AGENCY DNR  
 PHONE 465-2400  
 Original: Legislative Finance  
 cc: Budget and Management  
 Prime Sponsor (First Legislator Named)

FISCAL NOTE ANALYSIS CSHB 742 Resources

CSHB 742 would require the Department to determine which lands selected by the State are "mineral lands," as defined in the Act. That determination must be made for all land selected by the State that has passed, or could possibly pass, into other ownership. The recipient of a contract for the sale, lease, or grant of State land that is not "mineral land" would also receive the subsurface estate of that land under the provisions of CSHB 742. If the land has already passed into other ownership, the burden of proof would be on the applicant; however, the State would have to verify the applicant's claim.

All conveyances would need to be noted on the State's status plats. This task would require the services of one Land Management Officer III and one Drafting Technician II for the next two fiscal years.

The "mineral land" determination is a task that could be performed under contract. The work would involve matching over 100 million acres (over 6,000 individual townships), of State selected lands with the state of knowledge concerning mineral deposits on those lands at the time of selection.

Geologic and archival expertise would be required. State, federal, university and other public files would need to be examined, and several dozen involved individuals would need to be interviewed.

At two days of work per person, per township, which may be an optimistic rough average, approximately 3 million dollars would be required. (Assuming \$250/day for total costs of work). This estimate is listed on the contractual line of the contract.

Commodities includes reproduction costs and drafting supplies necessary to do the work; equipment includes office and drafting equipment.

# STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

## DEPARTMENT OF NATURAL RESOURCES

March 25, 1982

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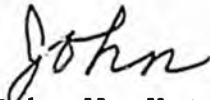
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Sincerely,



John W. Katz  
Commissioner

cc: Representative Richard Randolph  
Senator Bettye Fahrenkamp  
Wilson Condon, Attorney General  
Keith Specking, Legislative Assistant

FISCAL NOTE

I. REQUEST

Bill/Resolution No. CSHB 742 (Res.)

Title An Act relating to the mineral interest in state land

Requested by House Resources

Date 4/3/82

II. FISCAL DETAIL

Agency Affected Department of Natural Resources

Program Category Affected NRMEC

BRU, Program, or Subprogram(s) Affected Management and Administration

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

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OTHER (Specify Fund Source)						

POSITIONS

FULL TIME			2	2		
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

Attached

IV. DATE April 4, 1982

PREPARED BY Joe Burch, Deputy Director, Div. of Technical Services

AGENCY DNR

PHONE 465-2400

Original: Legislative Finance

cc: Budget and Management

Prime Sponsor (First Legislator Named)

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